(1)

011240 FEB 26 2002

No.

IN THE

SUPREME COURT OF THE UNITED STATES

In re:

GEORGE LAWSON KELLY

ON PETITION FOR AN EXTRAORDINARY WRIT OF PROHIBITION
FROM THE UNITED STATES DISTRICT COURT,
MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION

PETITION FOR A WRIT OF PROHIBITION

GEORGE LAWSON KELLY
522 Cleveland Street
Clearwater, Florida 33755
(727) 442-5093
Petitioner Pro Se.

Washington, D.C. • THIEL PRESS • (202) 328-3286

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QUESTIONS PRESENTED

1) Can a Court, which is the only Court that can offer the relief sought by Plaintiff, willfully and deliberately refuse to provide for a Hearing in the matter?

2) Can a Judge who is in evident violation of the provisions of 28 USC 455, preside over a case, issue orders, and have those orders stand?

3) Can a Justice or Justices of a state Supreme Court allow a Federal Judge to preside over a case where the Justices themselves are Defendants and the Justices knew, or should have known, that the Judge in the case is in evident violation of 28 USC 455?

4) Can an Order of the Court stand when the Order itself is a wrongful edict set to advantage one party in a dispute over the other party in evident disregard of the facts?

LIST OF RESPONDENTS

1. Chief Justice Charles T. Wells, Florida Supreme Court
2. Justice Major B. Harding, Florida Supreme Court
3. Justice Leander J. Shaw, Jr., Florida Supreme Court
4. Justice Harry Lee Anstead, Florida Supreme Court
5. Justice Barbara J. Pariente, Florida Supreme Court
6. Justice R. Fred Lewis, Florida Supreme Court
7. Justice Peggy A. Quince, Florida Supreme Court
8. Clerk Thomas D. Hall, Florida Supreme Court
9. Acting Clerk Debbie Causseaux, Florida Supreme Court
10. Florida Department of Transportation
11. Thomas F. Barry, Secretary Florida Department of Transportaion,
12. Kenneth A. Hartman, District 7 Secretary
13. City of Clearwater,
14. Brian Aungst, Mayor of Clearwater,
15. Ed Hart, Commissioner City of Clearwater
16. Ed Hooper, Commissioner City of Clearwater
17. Bob Clark, Commissioner City of Clearwater
18. J.B. Johnson, Commissioner City of Clearwater
19. Michael J. Roberto, former City Manager
20. Pamela Akin, City Attorney
21. Charlie Siemon, Development Consultant to the City of Clearwater.

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In The

Supreme Court Of The United States

In re George Lawson Kelly

PETITION FOR WRIT OF PROHIBITION

COMES NOW GEORGE LAWSON KELLY, Plaintiff/ Petitioner pro se, to file suit against aforementioned Respondents and says:

1. That this is an extraordinary action for a Writ of Prohibition.

2. That Petitioner is a resident, homeowner and taxpayer of the City of Clearwater, County of Pinellas, State of Florida.

OPINIONS BELOW

1) Order Transferring Petition -4 April, 2000

2) Order Granting in Part Movants' Motions to Dismiss Plaintiff's Amended Complaint; Order Denying as Moot Movants' Alterative Motions for Summary Judgment -22 August, 2001

3) Order sighting deficiencies of Plaintiff's Response to Reply

-24 August, 2001

4) Order Granting in Part Motion to Dismiss Plaintiff's Amended Complaint; Dismissing Plaintiff's claims against Defendant's; Denying as Moot Alternative Motion for Summary Judgment

-15 October, 2001

5) Order Dismissing case for Failure to Show Cause

-31 October, 2001

6) Order Granting Defendants' Motion to Dismiss Plaintiff's Amended Complaint; Denying Plaintiff's Motion for Leave to Amend

-2 November, 2001

7) Ordering Plaintiff to Show Cause regarding Defendant Charles Siemon

-6 November, 2001

8) Order Dismissing Case for Failure to Show Cause

-27 November, 2001

JURISDICTION

3. That this Court has jurisdiction in the matter pursuant to Article III §1 of the Constitution of the United States, 28 USC 455, 28 USC 1257 and 28 USC 1651.

4. That exceptional circumstances warrant the exercise of this Court's discretionary powers and that adequate relief cannot be obtained in any other form or from any other court.

STATEMENT OF THE CASE

5. That on or about the 5th day of November, 1998 the City of Clearwater did receive and did take possession of certain roadways at the entrance to Clearwater Beach from the State of Florida where such roadways previously constituted the beginning of State Road 60 a principle east/west artery and the commencement point of a Major Hurricane Evacuation Route see Doc. 1, pg A3.

6. That the City of Clearwater did then proceed to create and have constructed on the aforementioned roadways a singular traffic roundabout set to serve as a replacement for the previous intersections which were configured as in Exhibit A, pg. A1.

7. That the roundabout created and constructed by the City was merely one of a number of changes

undertaken all of which were primarily intended to beautify the entrance to Clearwater Beach where beautification and entertainment were to be the primary focus and the element of traffic mobility was viewed as a secondary concern with the roundabout set to surround the first of two massive fountains to be configured as in Exhibit B, pg. A2.

8. That prior to construction of the roundabout a Clearwater resident (Susan Boschen) did file suit to enforce a provision of the City's Charter requiring an approved referendum prior to the issuing of municipal bonds for all expenditures of monies in excess of 1-million dollars.

9. That the City of Clearwater did seek, and was granted, permission to bypass the referendum requirement citing overriding concerns of "Public Health and Safety" whereby the City stated and subsequently argued that the intersections to be replaced by the singular roundabout configuration were inherently unsafe with what the City claimed was an exaggerated accident count.

10. That the Petitioner (Susan Boschen) did bring the matter forward to the Florida Supreme Court on appeal and the Florida Supreme Court ruled against the appeal stating:

> "The wisdom or desirability of a bond issue is not a matter for our consideration."
> "Roundabouts typically reduce the number of accidents that occur by 60 to 70 percent."

> "We are charged only with judging the legality of the undertaking, though conceivably a project might be as ill-advised as it is legal." See Exhibit D, pg. A20.

11. That the operation of the completed roundabout did quickly evidence a dramatic increase in the number of accidents reported where such an increase has continued over time and as the January 19, 2002 edition of *The Wall Street Journal*, see Exhibit E, pg. A60, reported in it's front page story on the Clearwater Roundabout:

> "The frequency of accidents is eight times higher at the roundabout than at the intersections it replaced."

12. That the Petitioner, George Lawson Kelly, did file suit in the Florida Supreme Court by means of a **PETITION FOR WRIT OF MANDAMUS**, see Doc. 2, pg. A6 whereby Petitioner sought to have the Court compel the Secretary of the Florida Department of Transportation retake the affected roadways and redesign and reconfigure the said roadways to provide for safe passage on what is a mandated Major Hurricane Evacuation Route.

13. That the Supreme Court of the State of Florida did respond to the Plaintiff's clearly expressed PETITION FOR A WRIT OF MANDAMUS by means of an **ORDER**

TRANSFERRING PETITION, see Doc. 4, pg. A12 wherein it is stated:

> "Petitioner has submitted a Petition for Writ of Mandamus in this Court. It appears to the Court that the claims raised in the instant petition are more appropriately addressed in an action seeking declaratory relief under Chapter 86, Florida Statutes."

14. That Plaintiff/Petitioner did respond to the ORDER TRANSFERRING PETITION by categorically rejecting the ORDER citing once again the fact that:

> "The first responsibility of the (Florida) Secretary of
> Transportation is to provide for safe passage on the roadways which constitute the State road system and never more so than when these roadways are expected to be used as an Emergency Hurricane Evacuation Route."

15. That the Court responded to Plaintiff's **RESPONSE TO ORDER TRANSFERRING PETITION,** see Doc. 5, pg A13, and stated that Plaintiff's response would be treated as a **REQUEST FOR A REHEARING.**

16. That the above mentioned REQUEST FOR A REHEARING was subsequently denied.

17. That prior to the Court's denial of a REHEARING Plaintiff/Petitioner did submit to the

individually named Justices of the Florida Supreme Court a **PETITION FOR REVIEW**, see Doc. 6, pg. A15, seeking to have the individually named Justices address the issues raised by the Plaintiff/Petitioner stating that:

> "The ORDER TRANSFERRING PETITION issued under the hand of the Acting Clerk of the Supreme Court was a deliberate and specific attempt to thwart the progress of Plaintiff's PETITION FOR PEREMPTORY WRIT OF MANDAMUS by redirecting it to the Sixth Judicial Circuit, in and for Pinellas County, on the patently false assumption that Plaintiff was somehow seeking declaratory relief which would fall as a matter of course under Chapter 86, Florida Statutes.
>
> This patently false assumption that Plaintiff was somehow seeking declaratory relief is itself an outrageous act of Obstruction of Justice. Even a first year law student would know the difference between an effort to secure a Declaratory Judgment and a Writ of Mandamus. The first is about rights and the second is about responsibilities - FAILED responsibilities and never more so than is the case presented in Plaintiff's PETITION FOR PEREMPTORY WRIT OF MANDAMUS."

18. That the PETITION FOR REVIEW was never acknowledged or answered.

19. That the Plaintiff / Petitioner did conclude that the actions of the Clerk, the Acting Clerk , the individually named members of the Florida Supreme Court, and the whole of the Court did substantially and significantly impact the Petitioner's rights to due process and equal protection and did give rise to a suit in Federal Court to correct and address same.

20. That as expected the named Defendants did file the requisite Motions to Dismiss, see Documents 8, 9, 10, and 11, pgs. A23-A33, and that Plaintiff did address each and every point made by the Defendants.

21. That in the final written remarks made by the trial judge the wholly unwarranted position was taken (by the trial judge) that, everything else aside, Plaintiff/Petitioner lacked standing to pursue any action whether as to the roundabout or Plaintiff's perceived infringement of Plaintiff's rights stating:

> "Plaintiff's allegations that the actions of the Secretary of the Department of Transportation and the Florida Supreme Court have placed the City of Clearwater and taxpayers "at risk" are, at best, hypothetical and conjectural. Such vague

allegations are not sufficient to demonstrate a real and immediate threat of injury, and as such, fail to meet the threshold requirements of Article III."

ARGUMENT

This is a simple case.

It began with the Petitioner's efforts to have the Florida Supreme Court compel the Secretary of the Florida Department of Transportation retake a portion of State Road 60 from the City of Clearwater where the State had previously deeded that portion of State Road 60 to the City of Clearwater so that the City could create and construct a roundabout intersection.

Upon completion of the construction phase it became immediately apparent by the sheer volume of accidents that the roundabout was, to be charitable, not living up to expectations.

Instead of a "60-70% reduction" in accidents there was better than an eightfold increase.

Articles locally, nationally and internationally heralded the dysfunctional properties of the roundabout under headlines boldly proclaiming,

"TRAGIC ROUNDABOUT" - London Daily Mirror, Tuesday August 29, 2000, see Exhibit C, pg. A18

Under the terms of the transfer agreement between the City and the State, the City had to maintain the roundabout intersection to a certain level of mobility.

In the event of an accident the mobility level can, and has innumerable times, dropped to zero.

Lacking the bypass provisions of the old multiple intersection layout gridlock is a common occurrence.

If the Clearwater Beach roundabout was located almost anywhere else the exaggerated accident count, while not acceptable, might be tolerable; but, located where it is, at the epicenter of a Major Hurricane Evacuation Route, it poses a real clear and present danger to thousands of beach guests and residents.

In a hurricane evacuation situation even a minor accident could easily compromise the roundabout such that vehicular movement off the beach could be precluded with the very real prospects of death and injury all but certain.

This is not conjecture. This is a very real probability and such gridlock has occurred innumerable times already.

On this basis Plaintiff/Petitioner George Lawson Kelly brought suit by means of a PETITION FOR WRIT OF MANDAMUS to compel the Secretary of the Florida Department of Transportation to retake

the affected roadways and reconfigure them to provide for "safe passage."

The Florida Supreme Court having recently heard the matter as to the bond issue for the roundabout's construction, and having themselves previously declared that roundabouts were "60 to 70 percent" safer than traditional intersections, were now being asked, in effect, to reconsider, if not revoke, their prior decision and determine that this particular intersection was, by accident count alone, a hazard laden with evident risk.

The Florida Supreme Court was not prepared to address same.

Plaintiff/Petitioner's PETITION FOR WRIT OF MANDAMUS to the Florida Supreme Court speaks for itself and is attached and included herein, see Doc. 2, pg. A6.

The Florida Supreme Court's ORDER TRANSFERRING PETITION speaks for itself and is also attached and included herein, see Doc. 4, pg. A12.

It has been and continues to be the singular contention of the Plaintiff/Petitioner that the ORDER TRANSFERRING PETITION was a corrupt edict deliberately set to cast aside Plaintiff's legitimate efforts to be removed from a condition of evident risk where such risk was to be found in

the operation of a clearly dysfunctional intersection.

The Clearwater Beach roundabout is, by any reasonable reckoning, a disaster waiting to happen.

The roundabout's fundamental design failings of too small a circumference, combined with too many points of entrance and exit, while allowing for the inside lane to cross over the outside lane to effect an exit, is, clearly, not a workable model.

A singular accident or drowning or heart attack, not necessarily having anything immediately to do with the roundabout, could see the City and it's taxpayers liable for damages in a suit for "wrongful death or injury;" where such suit was predicated on inordinate delays related to, or associated with, the roundabouts inability to move the necessary and expected volumes of traffic.

As indicated in the recent *Wall Street Journal* article, 18 January 2002, see Exhibit E, pg. A60, the intersection was designed to move at best 32,000 vehicles per day where a busy day can and does see traffic counts exceeding 50,000.

Indeed, when one factors in the impact of pedestrian traffic in what is a pedestrian rich environment the roundabout clearly fails to meet the MINIMUM requirements of mobility as called for in the Transfer Document deeding the affected roadway to the City from the State, see Doc. 1, pg. A3.

The stated "cure" for *any* deficiencies as to mobility is clearly presented in the Transfer Document where it states:

> "In the event that the City does not comply with (f) [the mobility requirements expressed as an operating level of service "D"], the roadway will revert back to the Department."

This "reversion" has been and continues to be the goal, aim and intention of Plaintiff/Petitioner's efforts.

When Plaintiff/Petitioner's efforts were effectively "dead-ended" by the Florida Supreme Court, Plaintiff/Petitioner next sought relief in the Untied States District Court for the Middle District of Florida, Tampa Division.

Plaintiff/Petitioner did file a Complaint in the aforementioned Court and the members of the Florida Supreme Court, it's Clerk and Acting Clerk, did, through the office of the Florida Attorney General, file the expected Motion to Dismiss.

Plaintiff/Petitioner did address each and every point made by counsel for the named Defendants and Plaintiff/Petitioner was clearly dumbfounded when the federal court judge did grant Defendant's Motion.

Plaintiff/Petitioner was not prepared for the evident bias exhibited in the Order of Dismissal,

see Doc. 11, pg. A33 and Doc. 13, pg. A44, issued by the federal court judge and Plaintiff/Petitioner did immediately seek to gain an understanding of the federal court judge's motivation for issuing, what, to the Plaintiff/Petitioner, clearly was a wrongful edict.

Plaintiff/Petitioner immediately became aware of the provision of law referred to as 28 USC 455 where it is stated that:

> "Any justice, judge or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

Far from being in a position of "impartiality" the federal court judge had, in the one instance, for a two year period sat on The Bias/Fairness Commission of the Florida Supreme Court with a now Justice of the Florida Supreme Court.

Additionally, as a member of the Board of Overseers of Stetson College of Law, the federal court judge would have been in all probability a principle in giving yet another Justice of the Florida Supreme Court an Honorary Doctorate of Law degree.

Plaintiff/Petitioner was specifically asking the federal court judge to make a determination that the actions of the Florida Supreme Court, it's Members, Clerk and Acting Clerk did willfully and

deliberately obstruct justice in the matter of *George Lawson Kelly vs. Chief Justice Charles T. Wells et. al* where such a determination of itself would have seen these Defendants in violation of the "good conduct" clause as presented in Article III § 1 of the Constitution of the United States.

The relationships of the federal court judge to at least two of the Members of the Florida Supreme Court was not one of incidental contact but one of a prior professional relationship which clearly on the one hand extended over a period of at least two years.

Both the federal court judge and the two Supreme Court Justices had an absolute duty and obligation under the Law to seek recusal.

Such recusal was not sought nor was it forthcoming.

The concluding remarks of the federal court judge that:

> "Plaintiff has failed to satisfy the threshold requirements of Article III of the Untied States Constitution that parties seeking 'to invoke the power of the federal courts must allege an actual case or controversy'"

is, as any polite Englishman might say, balderdash.

It is the specific contention of the Plaintiff/Petitioner that the actions of the federal

court judge were willful and deliberate in granting the Motions to Dismiss to preclude Plaintiff/Petitioner' efforts at any avenue of appeal and that these Motions should never have been granted by a judge who should have never heard the matter.

The Clearwater beach roundabout stands as a hazard which represents the physical manifestation of an ongoing risk and if there were any doubts about this fact a Show Cause Hearing would have resolved same.

This ongoing and continuing risk is a threat that is both real and immediately evident and this threat grants to the Plaintiff/Petitioner standing to bring suit to be relieved of same.

All the artful and carefully crafted language to the contrary by the Defendants, the actions of the Defendants/Respondents and the federal court judge speak volumes.

Res Ipsa Loquitur

The Facts Speak for Themselves.

A hazard still stands.

A danger still exists.

An injustice has been done.

To use the Law to abuse the law is the most egregious and obnoxious of crimes.

Indeed, there could be no greater crime, no greater injustice, than that served up by members

of a Judiciary out to protect their own at the expense of another not so similarly situated.

This is a simple case.

There are no mistakes here.

There is no inadvertent error.

There is no simple misunderstanding.

There are, indeed, willful and deliberate acts and Plaintiff/Petitioner sues to be relieved of same.

RELIEF SOUGHT

This Court has wide latitude and broad discretion in addressing any matter brought before it whose resolution will aid in the administration of Justice.

Plaintiff/Petitioner recognizes that a PETITION FOR A WRIT OF PROHIBITION may or may not be the appropriate vehicle to bring this matter forward but if one accepts that the first duty of a Jurist is to preserve and uphold the integrity of the Court, then this case, and it's disposition, is of the first order.

CONCLUSION

Plaintiff/Petitioner specifically prays and requests that this Court:

1. Issue a WRIT OF PROHIBITION prohibiting all of the Orders issued from standing.

2. Issue the appropriate Writ to compel the Secretary of the Florida Department of Transportation to retake the affected roadways and redesign and reconfigure the said roadways to provide for "safe passage."

3. Issue the appropriate Writ or Declaratory Statement to address the propriety of the actions of the Florida Supreme Court, it's Clerk, Acting Clerk and Members.

4. Issue the appropriate Writ or Declaratory Statement to address the propriety of the actions of the federal district court judge.

5. Order restitution to the Plaintiff/Petitioner to compensate same for all reasonable expenses in the above styled action.

So prays the Petitioner.

George Lawson Kelly
Plaintiff/Petitioner
522 Cleveland Street
Clearwater, FL 33755
727.442.5093

(2)

Supreme Court, U.S.
FILED

011240 FEB 26 2002

OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

In re:

GEORGE LAWSON KELLY

ON PETITION FOR AN EXTRAORDINARY WRIT OF PROHIBITION
FROM THE UNITED STATES DISTRICT COURT,
MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION

APPENDIX TO
PETITION FOR A WRIT OF PROHIBITION

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116 pp

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Charles Siemon A104

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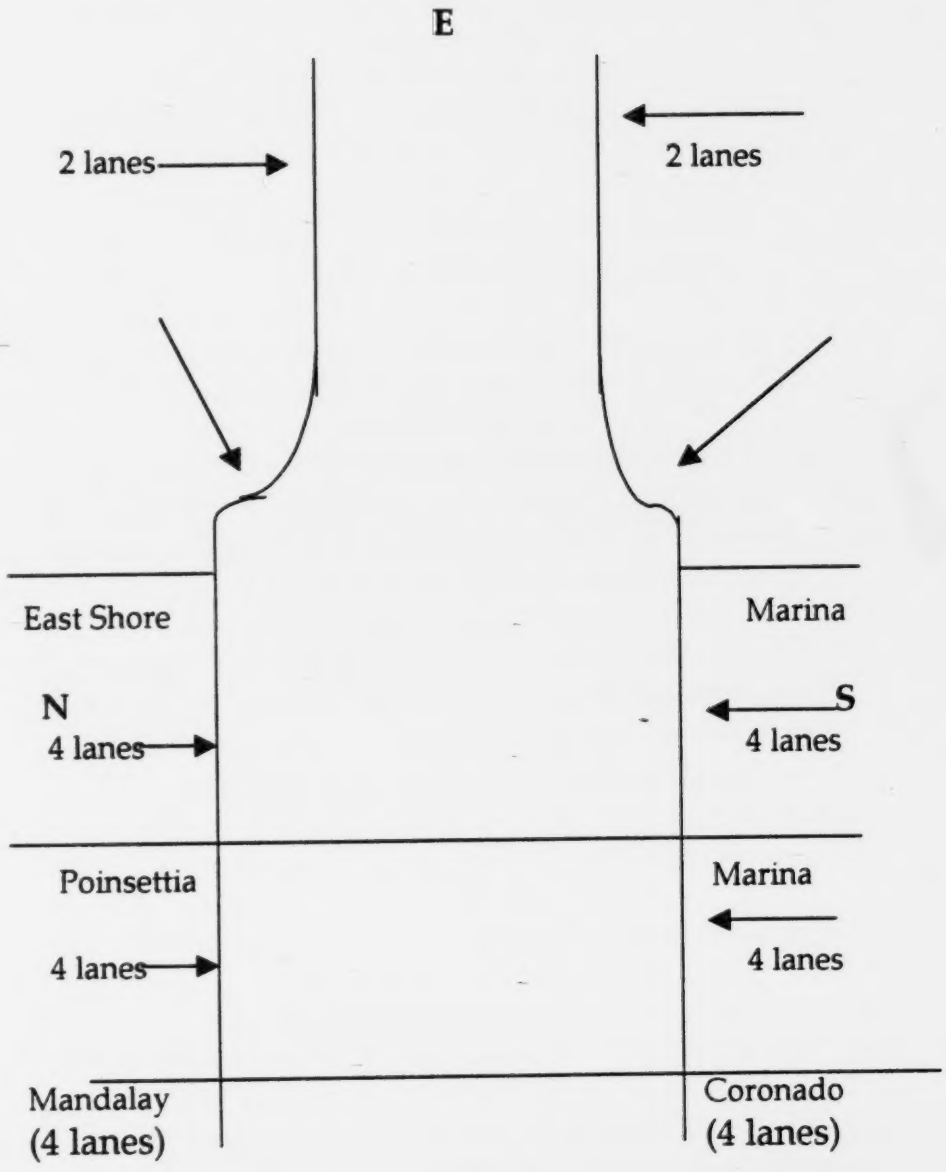
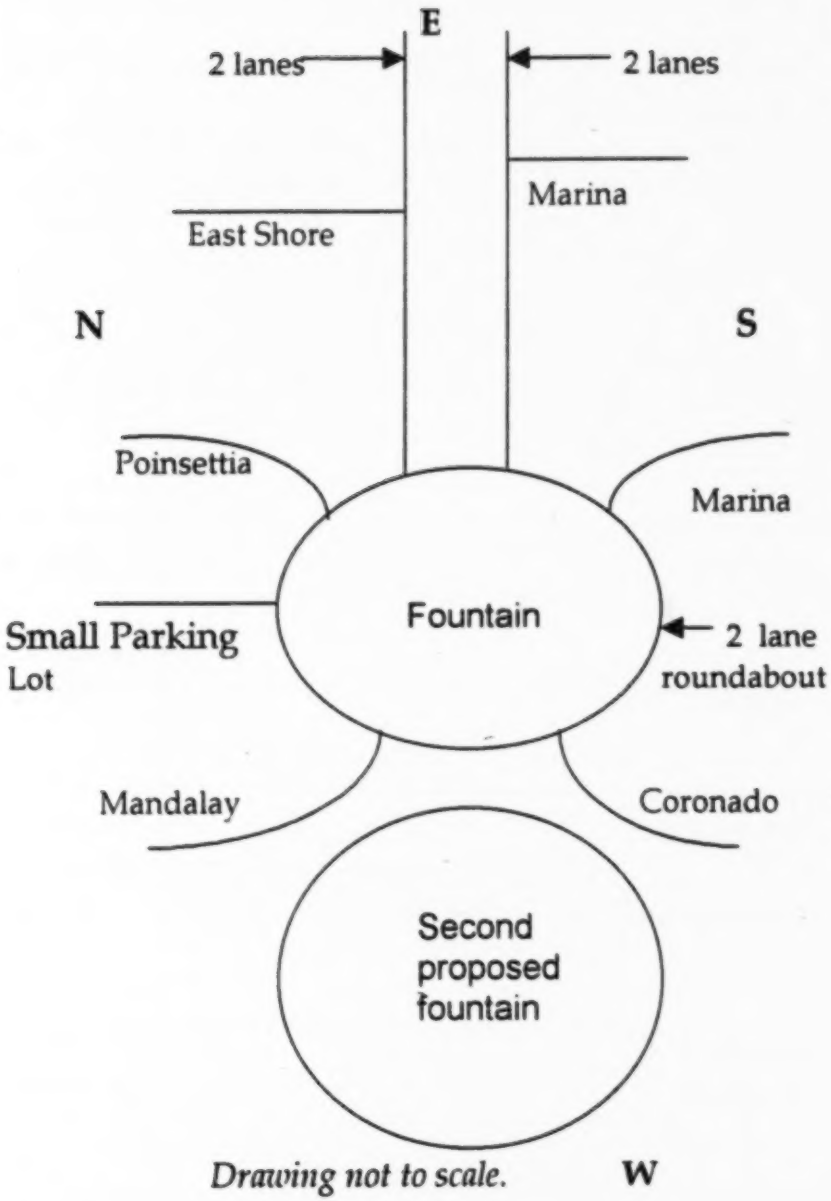
Exhibit A



Drawing not to scale.

A1

Exhibit B


E
2 lanes
2 lanes
Marina
East Shore
N
S
Poinsettia
Marina
Small Parking
Lot
Fountain
2 lane
roundabout
Mandalay
Coronado
Second
proposed
fountain
Drawing not to scale.
W

Document 1:1; Filed 11/1998

FLORIDA DEPARTMENT OF TRANSPORTATION / CITY OF CLEARWATER

ROADWAY TRANSFER AGREEMENT CAUSEWAY BOULEVARD AND MARIANNE STREET ONE-WAY PAIRS OF SR 60 TO CITY JURISDICTION

THIS AGREEMENT made and entered into this _____ day of _____, 1998, by and between the FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida, hereinafter called the DEPARTMENT, and the CITY OF CLEARWATER, hereinafter called the CITY.

WITNESSETH

WHEREAS, the CITY has requested the transfer of SR 60/Causeway Boulevard from Mandalay Avenue to Bridge Number 43 and SR 60/Marianne Street from Bridge Number 43 to Mandalay Avenue from the State Highway System, and this transfer is mutually agreed upon between the CITY and the DEPARTMENT.

NOW, THEREFORE, THIS INDENTURE WITNESSETH: in consideration of the mutual covenants and promises herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the CITY and the DEPARTMENT agree as set forth below:

This Agreement sets forth the terms and conditions under which the CITY and the DEPARTMENT will abide, commencing on the date of approval by the Secretary of the Florida Department of Transportation.

(a) The CITY accepts all responsibility for operation and maintenance of the roadway. In addition to the roadbed, this agreement includes all curbs, culverts, and drainage structures within the right-of-way at the time of transfer. The CITY shall be responsibility for maintenance of public sidewalks, and other ways in the right-of-way.

(b) All agreements with the State directly affecting SR 60 that are part of the existing development orders shall become commitments to the CITY and the CITY will be responsible for their disposition.

(c) The DEPARTMENT gives up all its rights to the road, except as specified in this agreement.

(d) It is agreed that all obligations of the DEPARTMENT under any maintenance, utility, or any other such agreement, relating to this specific road to be transferred, shall be transferred to the CITY at the same time and in the same manner as jurisdictional responsibility. The roadway transfer of SR 60/Causeway Boulevard and SR 60/Marianne Street shall be effective upon approval by the **Secretary of the Florida Department of Transportation.**

(e) Existing deeds or right-of-way maps will be recorded, by the CITY, in the public land records of Pinellas County in which the right-of-way maps will be recorded, by the CITY, in the public land records of Pinellas County in which the rights-of way are located. If right-of-way maps do not exist, it is recommended that the DEPARTMENT make maps and file them for possible future use.

(f) No action will be taken to compromise the integrity of Causeway Boulevard and Marianne Street as part of the SR 60 hurricane evacuation route. The CITY agrees that there will be no lane reduction or reconstruction that will compromise the current operating Level of Service "D" for Marianne Street and Causeway Boulevard.

(g) The CITY will not impose a toll on the portion of the roadway that is being transferred from the State Highway System.

(h) In the even that the CITY does not comply wit (f) and/or herein, the roadway will revert back to the DEPARTMENT.

All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.
This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all
previous communications, representations, or agreements, either verbal or written, between the parties hereto.
This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
For communication purposes, the parties may be reached at the following addresses and phone numbers.

Florida Department of Transportation
Mr. Kenneth A. Hartmann, P.E.
District Secretary
District Seven
1201 N. McKinley Drive
Tampa, Florida 33612
Telephone: (813) 975-6039, SunCom 512-7515
FAX: (813) 975-6443, SunCom 512-7800

City of Clearwater
Mr. Michael J. Roberto
City Manager
Post Office Box 4748
Clearwater, Florida 33758-4748

Telephone: (727) 562-4040
FAX: (727)562-4052

Each Party is an independent contractor and is not an agent of the other party. Nothing contained in this Agreement shall be construed to create any fiduciary relationship between the parties, during or after the performance of this Agreement. Neither party shall have the authority to bind the other party to any obligation whatsoever to any third party without the express specific written consent of the other.

Document 2:1; Filed 1/13/00

IN THE SUPREME COURT FOR THE STATE OF FLORIDA

GEORGE KELLY,
Plaintiff

v.

FLORIDA DEPARTMENT OF TRANSPORTATION,
THOMAS F. BARRY JR, as Secretary
KENNETH A. HARTMAN, P.E. as District Secretary,
District Seven

and:

CITY OF CLEARWATER,
BRIAN AUNGST SR as Mayor;
ED HART as Commissioner;
ED HOOPER as Commissioner;
BOB CLARK as Commissioner;
J.B. JOHNSON as Commissioner,

Defendants.

PETITION FOR PEREMPTORY WRIT OF MANDAMUS

COMES NOW GEORGE KELLY, Plaintiff pro se, to file suit against aforementioned Defendants and says:

1. That this an extraordinary action for a Peremptory Writ of Mandamus;

Document 2:2

2. That Petitioner is a resident, homeowner and taxpayer of the City of Clearwater, County of Pinellas, State of Florida;

3. That this Court has jurisdiction in that matter pursuant to Article V §3 (b)(8) of the Constitution of the State of Florida;

4. Petitioner sues Defendants and alleges;

   a. That the City of Clearwater, at it's own initiative, had the State of Florida, Department of Transportation, vacate, abandon and have cause to transfer over title to that section of SR 60 / Causeway Blvd., from Mandalay venue to Bridge No. 43 (Section 15220000, M.P. 0.000 to 0.197) and SR 60 / Marianne Street from Bridge No. 43 to Mandalay Avenue (Section 15220101, M.P. 0.000 TO 0.190) from the State Highway System to the City of Clearwater Road System;

   b. That said transfer occurred on or about the 5th day of November, 1998;

   c. That the City of Clearwater did then proceed to create and have constructed on the aforementioned roadways a traffic roundabout;

   d. That the City of Clearwater did not seek, nor did it receive, approval from the State of Florida for the changes it contemplated and then proceeded to construct in specific contravention of the covenants expressed in the Transfer document (article f) where it states:

Document 2:3

"No action will be taken to compromise the integrity of Causeway Boulevard and Marianne Street as part of the SR60 hurricane evacuation route. The City agrees that there will be no lane reduction or reconstruction that will compromise the current operating Level of Service "D" for Marianne Street and Causeway Boulevard."

e. That actions were taken which compromised the integrity of the Causeway Boulevard and Marianne Street as part of the SR 60 hurricane evacuation route, to wit:

i. that the construction of a massive and overwhelming fountain occupying 100% of the center island of the roundabout interchange contravenes the generally accepted sight line requirements summarized in the Florida Roundabout Guide (a Florida Department of Transportation publication) where it simply states:

"To the extent possible, drivers approaching the roundabout should be able to see other entering vehicles before they reach the yield line." 4.93
"In addition to the requirements in the previous sections, a driver should be provided enough visibility to readily assess the driving task. This cannot be precisely quantified but general guidance can be given" 4.93
and:

Document 2:4

"As emphasized in other sections, the layout of the roundabout must be clearly visible to approaching drivers. 4.10

ii. that in its prior configuration Marianne Street and Causeway Boulevard both flared immediately west of Bridge Number 43 from two lanes to four lanes such that the inner lanes permitted access to the parking spaces between the two streets as well as allowing traffic to enter and utilize the two cross streets – Poinsettia and East Shore Drive;

iii. that the outside lanes of both Marianne Street and Causeway Boulevard allowed ease of access to both Poinsettia and East Shore on the North and both of the marina entrances/exits on the South;

iv. that the reduction in available lanes from four to two will allow minor accidents or mishaps to impede or block access either to or from the Beach where previously such accidents or mishaps could be bypassed by utilizing the other available lanes;

v. that the reduction in available lanes from four to two on both Marianne Street and Causeway Boulevard adversely impacts the

ability of Emergency vehicles to either enter or leave the Beach area;

vi. that the lack of any crossover provisions in the center median leading to and from the roundabout carries with it the potential to see the north of the beach isolated in the event of an accident or mishap affecting roundabout operations;

f. That the specific remedy for the City's violation of the integrity of Causeway Boulevard and Marianne Street as part of the SR 60 hurricane evacuation route is to be found in article (g) of the Transfer Document where it states:
"In the event that the City does not comply with (f) herein, the roadway will revert back to the Department."

Wherefore, Plaintiff prays that this Court will issue as a matter of specific relief to the Plaintiff a **Peremptory Writ of Mandamus** returning ownership and operation of the aforementioned roadways to the Department of Transportation for reconstruction in accordance with applicable standards.

_____
George Kelly

George Kelly
522 Cleveland Street
Clearwater, Fl 33755
727.442.5093

Document 3:1; Filed 1/19/2000

IN THE SUPREME COURT OF FLORIDA

GEORGE KELLY,
Petitioner,

v. CASE NO. 2000-93

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION; THOMAS F. BARRY JR., Secretary of the Department of Transportation; KENNETH A. HARTMAN, as District 7 Secretary; et als.,

Respondents.
_____/

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that without waiving its right to contest the jurisdiction of this Court, and whether should this Court choose to issue an order of dismissal, issue an order to show cause, or otherwise allow this action to proceed, MARIANNE A. TRUSSELL will appear as counsel for the Respondents, STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, THOMAS F. BARRY, JR., Secretary of the Department of Transportation, and KENNETH A. HARTMANN, District 7 Secretary, in the above-styled appellate proceedings. All appellate documents and correspondence should be directed to her attention.

Respectfully submitted,

Document 3:2

MARIANNE A. TRUSSELL
Deputy General Counsel
FLORIDA BAR NO. 437166
Department of Transportation
Haydon Burns Building, MS 58
605 Suwannee Street
Tallahassee, FL 32399-0458
(850) 414-5265

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail on this 19th day of January, 2000, to **George Kelly,** pro se, 522 Cleveland Street, Clearwater, Florida 33755; and to the Mayor and City Commissioners of the City of Clearwater, 112 So. Osceola Avenue, Clearwater, Florida.

MARIANNE A. TRUSSELL

Document 4; Filed 4/4/00

Supreme Court of Florida

Tuesday, April 4, 2000

GEORGE KELLY
Petitioner,

vs.

FLORIDA DEPARTMENT OF TRANSPORTATION, et al.,
Respondents.

CASE NO. SC00-93

ORDER TRANSFERRING PETITION

Petitioner has submitted a Petition for Writ of Mandamus in this Court. It appears to the Court that the claims raised in the instant petition are more appropriately addressed in an action seeking declaratory relief under Chapter 86, Florida Statues. The petition is therefore hereby transferred instanter to the Circuit Court of the Sixth judicial Circuit, in and for Pinellas County. The transferee court shall treat the petition as if it had been originally filed there on the date it was filed in this Court, and petitioner has previously submitted a filing fee of $250 in this Court. The transfer of this case is not an adjudication or comment on the merits, nor is it a determination as to the transferee court's jurisdiction or whether this case should properly be considered as an action seeking declaratory relief.

A True Copy
[seal of the Supreme Court; s:/ Debbie Casseaux, Acting Clerk, Supreme Court]

H

cc: Hon. Karleen F. DeBlaker, Clerk
Mr. George Kelly
Mr. Thomas F. Barry, Jr., etc.
Mr. Kenneth A. Hartman
Mr. Michael J. Roberto
Ms. Marianne Trussell

Document 5:1; Filed 4/10/00

Supreme Court of Florida

Monday, April 10, 2000

GEORGE KELLY, **
Petitioner, **
vs. ** CASE NO. SC00-93
FLORIDA DEPARTMENT OF **
TRANSPORTATION, et al., **
Respondents.

RESPONSE TO ORDER TRANSFERRING PETITION

On Friday, the 7th of April, I received the ORDER TRANSFERRING PETITION.

I categorically reject this Order.

The Petition for Peremptory Writ of Mandamus is not an effort to ensure or enforce a right, power or privilege but is in fact an effort to have the Court enforce the acceptance of clearly defined responsibilities on the part of both the City and the State.

The first responsibility of the Secretary of Transportation is to provide for safe passage on the roadways which constitute the State road system and never more so than when these roadways are expected to be used as an emergency hurricane evacuation route.

The Peremptory Writ of Mandamus is a deliberate and specific effort to have the Court compel the Secretary of Transportation to fulfill this primary responsibility as it relates to that portion of State Road 60 at the entrance to Clearwater Beach.

The Transfer Agreement between the City and the State which effectively passed control over the affected roadways from the State to the City clearly states in article (f) that:

Document 5:2

No action will be taken to compromise the integrity of Causeway Boulevard and Marianne Street as part of the SR 60 hurricane evacuation route. The CITY agrees that there will be no lane reduction or reconstruction that will compromise the current operation Level of Service "D" for Marianne Street and Causeway Boulevard.

In testimony before the Court in the matter of Boschen vs. City of Clearwater* the City's own expert witness has testified that the roadways as currently constructed by the City do not meet the prescribed Schedule of operation Level of Service D.

The remedy for such a default is clearly delineated in the Transfer Agreement as article (h):

In the event that the CITY does not comply with (f) and/or (g) herein, the roadway will revert back to the DEPARTMENT.

The Peremptory Writ of Mandamus would see the Court return the affected roadways to the State for reconstruction in conformity to their own standards.

I would specifically ask and request that the Peremptory Writ of Mandamus be placed forthwith before the Court for its determination.

George Kelly
Petitioner

cc: Hon. Kathleen F. DeBlaker, Clerk
Debbie Causseaux, Clerk
Mr. Thomas F. Barry, Jr., etc.
Mr. Kenneth A. Hartman
Mr. Michael J. Roberto
Ms. Marianne Trussell

*Currently on appeal in the Florida Supreme Court

Document 6:1; Filed 4/17/01

Supreme Court of Florida

MONDAY, APRIL 17, 2000

GEORGE KELLY, **

Petitioner, **

vs.

**CASE NO. SC00-93

FLORIDA DEPARTMENT
OF TRANSPORTATION,
et al., **

Respondents.

PETITION FOR REVIEW

This is a Petition for Review to the Named Members of the Supreme Court of the State of Florida which seeks certain specific measures of relief where such relief is the prerogative of the Named Members. The Named Members are: Chief Justice Major B. Harding; Justice Leander J. Shaw, Jr.; Justice Charles T. Wells; Justice Harry Lee Anstead; Justice Barbara J. Pariente; Justice R. Fred Lewis; and Justice Peggy A. Quince.

On Friday, the 7th of April, 2000, I received an ORDER TRANSFERRING PETITION issued under the hand and seal of the Acting Clerk of the Supreme Court.

Document 6:2

The Order referred to my previously submitted and accepted Petition for a Peremptory Writ of Mandamus which sought to have the Court compel the Secretary of Transportation for the State of Florida to retake certain described portions of State Road 60 back from the City of Clearwater (A City) for reconstruction in accordance with the States own standards.

The affected roadways had been previously transferred from the State to the City with the specific stipulation that the roadways had to be maintained to a certain standard as part of the State Road 60 Hurricane Evacuation Route.

Upon the taking of the affected roadways by the City, the City did then proceed to construct on the aforementioned roadways a traffic circle which was itself encumbered by a massive and overwhelming fountain which violates both the State and Federal Standards for forward vision such that a driver can never see more than a slice of the approaching roadway.

This restriction on forward vision places an inordinate burden on the motorist who cannot see and thus cannot begin to predict the actions of the other motorists involved in and/or entering the circle.

This has created a hazardous driving environment which by published accounts sees better than an accident a day in the affected intersection.

The first responsibility of the Secretary of Transportation is to provide for safe passage on the roadways which constitute the State Road system and never more so than when these roadways are expected to be used as an emergency hurricane evacuation route.

Document 6:3

My Peremptory Writ of Mandamus was a deliberate and specific effort to have the Court compel the Secretary of Transportation to fulfill this primary responsibility as it relates to that portion of State Road 60 at the entrance to Clearwater Beach by having the State retake the affected roadways and reconstruct them in accordance with the States own standards.

The ORDER TRANSFERRING PETITION issued under the hand of the Acting Clerk of the Supreme Court was a deliberate and specific attempt to thwart the progress of my Peremptory Writ of Mandamus by redirecting it to the Sixth Judicial Circuit, in and for Pinellas County, on the patently false assumption that I was somehow seeking declaratory relief which would fall as a matter of course under Chapter 86, Florida Statutes.

This patently false assumption that I was somehow seeking declaratory relief is itself an outrageous act of Obstruction of Justice. Even a first year law student would know the difference between an effort to secure a Declaratory Judgment and a Writ of Mandamus. The first is about rights and the second is about responsibilities - FAILED responsibilities and never more so than is the case presented in my Petition for Peremptory Writ of Mandamus.

Quite simply and quite bluntly the integrity of the Court has been brought into question by the actions of the Acting Clerk of the Supreme Court. These actions on the part of the Acting Clerk are too gross of an error to be anything other than deliberate.

Today a significant portion of this Community stands at risk because of the incompetence and misfeasance of both

the City and the State and to this burden we now add the element of Obstruction of Justice on the part of the Office of the Clerk of the Supreme Court of the State of Florida.

Petitioner would therefore ask and request of the Named Members such certain and specific relief as would see the ORDER TRANSFERRING PETITION made null and void and that the Peremptory Writ of Mandamus be brought forward to the full Court for its immediate adjudication.

George Kelly
522 Cleveland Street
Clearwater, FL 33755
727.442.5093

cc: Hon. Karleen F. DeBlaker, Clerk
Mr. Thomas F. Barry, Jr., etc.
Mr. Kenneth A. Hartman
Mr. Michael J. Roberto
Ms. Marianne Trussel

Exhibit C:1; 8/29/00

TRAGIC ROUNDABOUT
The London Mirror, Tuesday, August 29, 2000, full-page article
[caption for photograph of fountain/roundabout]
CRASH COURSE: The new £5million roundabout at Clearwater, Florida, where so may unwary drivers have come to grief

309 accidents in seven months as American drivers fail to master British traffic scheme
THEY'RE no problem for British motorists, but roundabouts are virtually unknown in America and this one has caused chaos.

Since it opened seven months ago, there have been 309 crashes.

British holidaymakers at the Florida resort of Clearwater are so amazed at the number of pile-ups that they've even been lining up to watch the locals playing dodgems.

And council officials have now called in British consultant Barry Crown to advise on changes to help the traffic flow and stop drivers bumping into each other. Barry said: "The number of accidents is significantly above the average of other new roundabouts in the USA.

"Almost all are exit accidents. Remedial measures are needed."

One holidaymaker, Ron Cohen from Bristol, said: "It's a bit like watching the Wacky races.

Exhibit C:2

There's nothing wrong with the roundabout, it's just the same as the ones at home.
But American driers don't know how to use them properly." Many residents in the seaside town want the £5million roundabout scraped. Three hundred turned up at a protest meeting.

They say it's dangerous and only a mater of time before someone is killed.

Clearwater Beach motel owner Suzanne Boschen said: "The whole bloody thing is tragic. You've just got to look at the money they've thrown away on it."

Another local, Paul Koenig, said simply: "I would purchase a bulldozer."

But the council are already planning another roundabout nearby at north Clearwater Beach.

They feel it's the best way of streaming traffic into the popular tourist areas.

Commissioner Ed Hooper suggested calling the roundabout something else -like an "intersection reconfiguration feature."

He joked: "Anything to avoid using the r word."

Other America states are also experimenting with roundabouts.

At the Colorado ski resort of Vail, officials had to promise the rich residents they would tear theirs down if it didn't work.

Exhibit C:3

They also paid for detailed instructions which went out on local television telling drivers how to handle the roundabout.
a.lines@mirror.co.uk

Exhibit D:1; 1/27/01

Decision made in a roundabout way
Tampa Tribune, January 27, 2001

Florida's highest court, known in the legal community as "The Supremes," has sided with the city of Clearwater in the now-settled legal dispute over funding for the notorious Mike Roberto Memorial Beach Roundabout.

The court had to use some pretzel logic disguised as legal jargon to conclude that the roundabout and its famous, windshield-misting fountain are a public safety device.

That's good for the city, because it is now free to borrow the $12 million budgeted to fund the traffic monument.

Under city law, any project that requires the city to borrow more than $1 million has to be approved by a voter referendum. Exceptions are granted for emergencies such as civil defense - or public safety.

Some pesky residents felt that a fancy roundabout with its gigantic water fountain, which has created a traffic bottleneck worse than the intersection it replaced, did not qualify for an exemption from the referendum requirement.

A trial court agreed with the city's arguments that the roundabout was intended to calm anxious motorists who might otherwise be colliding with one another.

Exhibit D:2

It also agreed that the roundabout promotes cleaner air by eliminating the need for cars to sit idling at several stop lights.

In their written ruling upholding the lower court, the Supreme Court justices made no mention of the numerous, daily traffic wrecks that have plagued the roundabout since its debut in December 1999.

Nor did they stretch to say the $2 million fountain comes in handy as a spot for injured pedestrians to wash their wounds after being struck by motorists "zombitized" by the roundabout's much-ballyhooed traffic-calming effects.

But the justices made strict legal sense:

"The wisdom or desirability of a bond issue is not a matter for our consideration, " the justices wrote.

"Roundabouts typically reduce the number of accidents that occur by 60 to 70 percent," the Robed Ones continued.

"We are charged only with judging the legality of the undertaking, though conceivable a project might be as ill-advised as it is legal."

There you have it.

Document 7:1, Filed 6/19/2001

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GEORGE LAWSON KELLY
Plaintiff Case No. _____

v.

CHIEF JUSTICE CHARLES T. WELLS, individually
JUSTICE MAJOR B. HARDING, individually
JUSTICE LEANDER J. SHAW JR., individually
JUSTICE HARRY LEE ANSTEAD, individually
JUSTICE BARBARA J. PARIENTE, individually
JUSTICE R. FRED LEWIS, individually
JUSTICE PEGGY A. QUINCE, individually
CLERK THOMAS D. HALL, individually
ACTING CLERK DEBBIE CAUSSEAUX, individually

and,

FLORIDA STATE DEPARTMENT OF TRANSPORTATION, a State entity

and,

SECRETARY THOMAS F. BARRY JR., individually
KENNETH A. HARTMAN, individually
MARIANNE A. TRUSSEL, individually

and,

CITY OF CLEARWATER, a Municipal entity of the State of Florida

and,

Document 7:2

MAYOR BRIAN AUNGST, individually
COMMISSIONER ED HART, individually
ED HOOPER, individually
BOB CLARK, individually
J.B. JOHNSON, individually
MICHAEL J. ROBERTO, individually
PAMELA AKIN, individually
CHARLES SIEMON, individually
and,
JUDGE CROCKETT FARNELL, individually.

COMPLAINT

1) **COMES NOW GEORGE KELLY,** Plaintiff pro se, a resident, homeowner and taxpayer of the City of Clearwater, County of Pinellas, State of Florida to file suit against aforementioned Defendants and says:

2) Defendants are, variously, Justices of the Florida Supreme Court, Clerk and Acting Clerk of the Florida Supreme Court; the Secretary of the Florida Department of Transportation, a District Manager of the Florida Department of Transportation, the Counsel of Record for the Florida Department of Transportation; the City of Clearwater, the Mayor, one current and former Commissioners, the former City Manager, the City Attorney, the City's Development Consultant; and a Judge of the Sixth Judicial Circuit, in and for Pinellas County, Florida.

JURISDICTION.

3) Jurisdiction of this Court is invoked pursuant to (i) 28 U.S.C. 1331 and (II) 28 U.S.C. 1343.

NATURE OF THIS ACTION

4) This is a civil rights action brought pursuant to 42 U.S.C. 1983, 1985, 1986 and 1988 to address violations of Plaintiff's rights under the first and fourteenth amendments to the United States Constitution.

5) Plaintiff challenges Defendants failure to address the issues raised by Plaintiff in Plaintiff's PETITIONS FOR PEREMPTORY WRIT OF MANDAMUS, RESPONSE TO ORDER TRANSFERRING PETITION and Plaintiff's PETITION FOR REVIEW.

FIRST CAUSE OF ACTION.

6) That on or about the 20th day of December, 1999 Plaintiff did file in the Circuit Court of the Sixth Judicial Circuit, in and for Pinellas County, Florida, a PETITION FOR (A) PEREMPTORY WRIT OF MANDAMUS (a copy of which is attached and made a part hereto as EXHIBIT 1) which sought to have the Court compel the Secretary of the Florida Department of Transportation retake from the City of Clearwater, a certain portion of State Road 60 at the entrance to Clearwater Beach.

7) That said and certain portion of State Road 60 at the entrance to Clearwater Beach had been transferred from the State to the City, at the request of the City, so that the City could undertake to build a grand entryway to the Beach centered on a roundabout traffic configuration.

8) That by the Transfer Agreement between the City and the State (a copy of which is attached and made a part

hereto as EXHIBIT 2) the City was to maintain the roundabout intersection to achieve a certain measure of traffic movement given that the affected roadways constituted an essential and integral part of the State's Hurricane Evacuation Routes.

9) That it was the specific contention of Plaintiff in the aforementioned Petition For Peremptory Writ of Mandamus that the City failed to construct a roundabout / intersection capable of moving the necessary volume of traffic as specifically required under the terms of the Transfer Agreement (between the City and the State) and that at the time of filing the City's roundabout had, instead, the perverse effect of constituting itself as a demonstrable hazard averaging better than one accident per day.

10) That as a demonstrable hazard with no bypass provisions the roundabout / intersection had, and still has, the capability to isolate a significant portion of Clearwater Beach and make evacuation thereof difficult, if not impossible, should the roundabout be compromised by accident or mishap or in the event of an emergency.

11) That by the Transfer Agreement between the City and the State the cure for any deficiencies or shortcomings was for the affected roadway to be reverted back to the State for reconfiguration in a manner appropriate to achieve the State's own standards of vehicular movement.

12) That Plaintiff's Petition For Peremptory Writ Of Mandamus was filed with the Circuit Court of the Sixth Judicial Circuit, in and for Pinellas County, Florida as Case No. 99-8463-CI-88B on the 20th day of

December, 1999 and assigned to Judge David A. Demers.

13) That on or about the 4th day of January, 2000, Judge Demers did issue an order Requiring Plaintiff to file (an) Amended Petition addressing the question of Jurisdiction.

14) That upon further research and review by Plaintiff, Plaintiff concluded that the lower court did not have jurisdiction in the matter as only the Florida Supreme Court could effect the remedy sought by Plaintiff, to wit, the ordering of the Secretary of Transportation to retake the affected roadways for reconstruction in a manner consistent with the State's own guidelines.

15) That in furtherance of the conclusion expressed in 14, above, Plaintiff did amend Plaintiff's Petition for Peremptory Writ of Mandamus and re-file it with the Florida Supreme Court on or about the 13th day of January, 2000, where it stands as Case No: SC 00-93 (a copy of which is attached and made a part hereto as EXHIBIT 3).

16) That on or about the 4th day of April, 2000 the Florida Supreme Court, under the hand of the Acting Clerk of the Court, Debbie Causseaux, did issue an ORDER TRANSFERRING PETITION (a copy of which is attached and made a part hereto as EXHIBIT 4) directing that the Plaintiff's Petition for Peremptory Writ of Mandamus be transferred back to the Circuit Court of the Sixth Judicial Circuit, in and for Pinellas County, on the assumption and / or presumption that Plaintiff "appears" to seek Declaratory Relief under Chapter 86 and not, as Plaintiff contends, relief affected by a Peremptory Writ of Mandamus.

17) That on or about the 12th day of April, 2000, Plaintiff did file with the Supreme Court of the State of Florida a RESPONSE TO ORDER TRANSFERRING PETITION (copy of which is attached and made a part hereto as EXHIBIT 5) specifically rejecting the Order issued under the hand of the Acting Clerk of the Court and requesting that the Petition for (a) Peremptory Writ of Mandamus be placed before the Court for it's consideration.

18) That Plaintiff's Response to Order Transferring Petition was accepted by the Court as a Motion for Rehearing.

19) That subsequently on or about the 23rd day of May, 2000 the Court did issue under the hand of the Clerk of the Court an Order denying Plaintiff's Petition for (a) Motion for Rehearing (a copy of which is attached and made a part hereto as EXHIBIT 6).

SECOND CAUSE OF ACTION

20) The Plaintiff, George Lawson Kelly, repeats and realleges the allegations in paragraphs 1 through 19 and same are incorporated herein by reference as though pleaded in full and further alleges:

21) That on or about the 17th day of April, 2000, Plaintiff did address a PETITION FOR REVIEW (a copy of which is attached and made a part hereto as EXHIBIT 7) to the individually named members of the Florida Supreme Court where such Petition sought to have the individually named members of the Court confront and address what to the Plaintiff / Petitioner were outrageous illegalities, or demonstrated ignorance of the law, on the part of the Clerk and / or Acting Clerk of the Court.

22) That Plaintiff did specifically contend in the Petition for Review that the first responsibility of the Secretary of Transportation is to provide for safe passage on the roadways which constitute the State Road System and never more so than when these roadways are expected to be used as Emergency Hurricane Evacuation Routes.

23) That Plaintiff's Petition for Peremptory Writ of Mandamus was a deliberate and specific effort to have the Court compel the Secretary of Transportation to fulfill this primary responsibility as it relates to that portion of State Road 60 at the entrance to Clearwater Beach by having the State retake the affected roadways and reconstruct them in accordance with the State's own standards.

24) That the Order Transferring Petition issued under the hand of the Acting Clerk of the Supreme Court was a deliberate and specific attempt to thwart the progress of Plaintiff's Petition for Peremptory Writ of Mandamus by redirecting it to the Sixth Judicial Circuit, in and for Pinellas County, on the patently false assumption that Plaintiff was somehow seeking declaratory relief which would fall as a matter of course under Chapter 86, Florida Statutes.

25) That this patently false assumption that Plaintiff was somehow seeking declaratory relief was itself an outrageous act of Obstruction of Justice as "even a first year law student would know the difference between an effort to secure a Declaratory Judgment and a Peremptory Writ of Mandamus. The first being about rights and the second being about responsibilities - FAILED responsibilities and never more so than is the case presented in Plaintiff's Petition For Peremptory Writ of Mandamus."

26) That the first duty of a Jurist is to preserve and uphold the integrity of the Court and never more so than when the Jurist is a Justice of a Supreme Court.

27) That none of the individually named members of the Florida Supreme Court did respond in any manner to Plaintiff / Petitioner's Petition for Review where such a non-response response constituted a willful and deliberate denial with prejudice.

THIRD CAUSE OF ACTION

28) The Plaintiff, George Lawson Kelly, repeats and realleges the allegations in paragraphs 1 through 27 and same are incorporated herein by reference as though pleaded in full and further alleges:

29) That on or about the 27th day of February, 2001, Plaintiff did file for a Peremptory Writ of Mandamus (a copy of which is attached and made a part hereto as EXHIBIT 7) where such filing was constituted as Case No. 01-001524-CI-15 and where such filing did seek to have the Court order the City of Clearwater to comply with the provisions of the City Charter which specifically compels the City to provide for a referendum in matters or instances where the City sought to spend in excess of $1,000,000.

30) That a Peremptory Writ of Mandamus is a Writ of the First Order and is, by law, meant to be addressed and dealt with in an expeditious manner.

31) That as of the date of the submission of this action there has been no response on the part of Judge Crockett Farnell to address the issues raised in Plaintiff's Petition for a Peremptory Writ of Mandamus.

32) That the rationale behind the deliberate delay on the part of Judge Crockett Farnell et. al. relates specifically to a beach redevelopment program which has been challenged by Plaintiff where such a redevelopment program would see in excess of 80-million dollars of "development rights" passed from the City to private developers with no cash return to the City and it's taxpayers, but which would at the same time see the City spend additional millions of dollars in furtherance's of said development program where such expenditures in the absence of an approved vote by referendum constitutes a specific violation of the City's Charter.

33) That the granting of the Plaintiff / Petitioner's Petition for Peremptory Writ of Mandamus in the above styled action would cause the development program as currently structured to be put to a referendum where a NO vote would most likely lead to a more appropriate development program.

34) That the failure on the part of Judge Crockett Farnell to address Plaintiff's Petition for (a) Peremptory Writ of Mandamus constitutes a willful and deliberate denial with prejudice.

SUMMARY

34) In the first instance Plaintiff has sought to have the City, the State and, finally, the Supreme Court of the State of Florida confront and address the issues of vehicular movement and safety associated with the roundabout / intersection at the entrance to Clearwater Beach.

35) It is the specific contention of Plaintiff that the roundabout / intersection constitutes an ongoing hazard which carries with it the very real potential to

see a significant portion of Clearwater Beach become isolated and made inaccessible by accident, mishap or the ravages of a hurricane.

36) It is the further contention of Plaintiff that the responsibility for providing safe passage on the roadways of the state rests with the Secretary of the Florida Department of Transportation and he, aided and abetted by his officials, by the City and it's officials, and the officials and officers of the Supreme Court of the State of Florida, has failed to exercise this responsibility as regards the roundabout / intersection at the entrance to Clearwater Beach thus placing the City and it's taxpayers at considerable and continuing risk.

37) In the second instance Plaintiff has sought to have the City follow it's own Charter requirements in the matter of expenditures of funds in excess of one million dollars and this effort on the part of Plaintiff has been willfully, deliberately and maliciously blocked by one Judge Crockett Farnell in association with the City and it's agents.

CONCLUSION

38) It is the specific contention of Plaintiff that Defendants herein, under color of the laws of the State of Florida and statutes, customs, or usages of the State of Florida did purposefully conspire and cause or permit Plaintiff to be subjected to the deprivation of rights, privileges and immunities secured to Plaintiff by the Constitution and Laws of the United States.

39) It is the further contention of Plaintiff that the object of the conspiracy was to deprive, either directly or indirectly, Plaintiff of Plaintiff's first amendment Right of Petition and of the equal protection of the laws or the

equal privileges and immunities under the laws and, further, that the conspiracy was and is motivated by an invidious animus towards Plaintiff that would substantially obviate Plaintiff's legitimate efforts and concerns.

40) Plaintiff contends specifically that there were numerous acts committed in furtherance of this conspiracy the three most egregious of which were:

a. Defendants' willful, deliberate and malicious attempts to shunt Plaintiff's efforts aside by insidiously mislabeling Petitioner's Petition for a Peremptory Writ of Mandamus as an effort to secure Declaratory Relief where "even a first year law student would know the difference between an effort to secure a Declaratory Judgment and a Writ of Mandamus. The first is about rights and the second is about responsibilities – FAILED responsibilities and never more so than in the case presented by Plaintiff in Plaintiff's Petition for Peremptory Writ of Mandamus" and;

b. Defendants', in this instance, the Justices of the Florida Supreme Court, willful, deliberate, and malicious failure to address Plaintiff's concerns as expressed in Plaintiff's Petition for Review and;

c. Defendant, Judge Crockett Farnell's willful, deliberate and malicious failure to address Plaintiff's concerns as expressed in Plaintiff's Petition for Peremptory Writ of Mandamus. The right to Petition carries with it the right to

have the Petition acknowledged and answered lest it constitute no right at all.

RELIEF SOUGHT

WHEREFORE, Plaintiff respectfully prays, that upon Judgment by the Court, relief will be awarded:

1) for Plaintiff's attorney's fees
2) for Plaintiff's costs and disbursements in this action
3) for such other and further relief as the Court may deem just and equitable in bringing this matter before the Court,

and;

Plaintiff further prays that the Court will award at the determination of the Jury such damages and punitive damages that would see the principle agents of conspiracy subject to punitive damages of not less than one million dollars, individually, and that those individuals who participated in a peripheral manner be subject to punitive damages of not less than 50-thousand dollars.

Further, at the determination of the Jury and the concurrence of the Court, the individually named members of the Florida Supreme Court shall be subject to punitive damages in an amount not less than one million dollars each.

Plaintiff specifically requests that the matters as presented be put to a Jury.

So prays the Plaintiff.

Document 7:13

Submitted by: George Lawson Kelly
George Lawson Kelly, Plaintiff pro se
522 Cleveland Street
Clearwater, FL 33755
727.442.5093

Document 8; Filed 7/24/01

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GEORGE LAWSON KELLY,
Plaintiff **CASE NO.: 8:01-CV-1162-T-24-TBM**

v.

CHIEF JUSTICE CHARLES T. WELLS,
et.al.,
Defendants

MOTION TO AMEND COMPLAINT

COMES NOW GEORGE LAWSON KELLY, Plaintiff pro se, to amend above Complaint to reflect and remove any claim on the part of the Plaintiff for damages as to the actions of the Members of the Florida Supreme Court, the Named employees of the Court and the State of Florida.

Plaintiff would as well amend Complaint to reflect as a matter of Relief Sought that a Declaratory Judgment be entered by the Court where such Declaratory Judgment would reflect the Courts views and concerns as to the nature, impact and import of the Order Transferring Petition on Plaintiff's rights to Due Process and Equal Protection.

Wherefore, Plaintiff moves that the Complaint be amended as above.

So prays the Plaintiff.

George Kelly, Plaintiff Pro Se
522 Cleveland Street
Clearwater, FL 33755
727.442.5093

Document 9:1; Filed 6/22/2001

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GEORGE LAWSON KELLY
Plaintiff Case No. 8:01 - CV - 1162 - T - 24
TBM
v.
CHIEF JUSTICE CHARLES T. WELLS,
JUSTICE MAJOR B. HARDING,
JUSTICE LEANDER J. SHAW JR.,
JUSTICE HARRY LEE ANSTEAD,
JUSTICE BARBARA J. PARIENTE,
JUSTICE R. FRED LEWIS,
JUSTICE PEGGY A. QUINCE,
CLERK THOMAS D. HALL,
ACTING CLERK DEBBIE CAUSSEAUX,
and,
FLORIDA STATE DEPARTMENT OF TRANSPORTATION, a State entity
and,
SECRETARY THOMAS F. BARRY JR.,
KENNETH A. HARTMAN,
MARIANNE A. TRUSSEL,
and,
CITY OF CLEARWATER, a Municipal entity of the State of Florida

and,
MAYOR BRIAN AUNGST,
COMMISSIONER ED HART,
ED HOOPER,
BOB CLARK,
J.B. JOHNSON,
MICHAEL J. ROBERTO,
PAMELA AKIN,
CHARLES SIEMON,
and,
JUDGE CROCKETT FARNELL,

AMENDED COMPLAINT

COMES NOW GEORGE KELLY, Plaintiff pro se, a resident, homeowner and taxpayer of the City of Clearwater, County of Pinellas, State of Florida to file suit against aforementioned Defendants individually and in their official capacities and says:

1) Defendants are, variously, Justices of the Florida Supreme Court, Clerk and Acting Clerk of the Florida Supreme Court; the Secretary of the Florida Department of Transportation, a District Manager of the Florida Department of Transportation, the Counsel of Record for the Florida Department of Transportation; the City of Clearwater, the Mayor, one current and former Commissioners, the former City Manager, the City Attorney, the City's Development Consultant; and a Judge of the Sixth Judicial Circuit, in and for Pinellas County, Florida.

JURISDICTION

2) Jurisdiction of this Court is invoked pursuant to (i) 28 U.S.C. 1331 and (II) 28 U.S.C. 1343.

NATURE OF THIS ACTION

3) This is a civil rights action brought pursuant to 42 U.S.C. 1983, 1985, 1986 and 1988 to address violations of Plaintiff's rights under the first and fourteenth amendments to the United States Constitution.

Plaintiff challenges Defendants failure to address the issues raised by Plaintiff in Plaintiff's PETITIONS FOR PEREMPTORY WRIT OF MANDAMUS, RESPONSE TO ORDER TRANSFERRING PETITION and Plaintiff's PETITION FOR REVIEW.

FIRST CAUSE OF ACTION.

4) That on or about the 20th day of December, 1999 Plaintiff did

file in the Circuit Court of the Sixth Judicial Circuit, in and for Pinellas County, Florida, a PETITION FOR (A) PEREMPTORY WRIT OF MANDAMUS (a copy of which is attached and made a part hereto as EXHIBIT 1) which sought to have the Court compel the Secretary of the Florida Department of Transportation retake from the City of Clearwater, a certain portion of State Road 60 at the entrance to Clearwater Beach.

5) That said and certain portion of State Road 60 at the entrance to Clearwater Beach had been transferred from the State to the City, at the request of the City, so that the City could undertake to build a grand entryway to the Beach centered on a roundabout traffic configuration.

a. That by the Transfer Agreement between the City and the State (a copy of which is attached and made a part hereto as EXHIBIT 2) the City was to maintain the roundabout intersection to achieve a certain measure of traffic movement given that the affected

roadways constituted an essential and integral part of the State's Hurricane Evacuation Routes.

b. That it was the specific contention of Plaintiff in the aforementioned Petition For Peremptory Writ of Mandamus that the City failed to construct a roundabout / intersection capable of moving the necessary volume of traffic as specifically required under the terms of the Transfer Agreement (between the City and the State) and that at the time of filing the City's roundabout had, instead, the perverse effect of constituting itself as a demonstrable hazard averaging better than one accident per day.

6) That as a demonstrable hazard with no bypass provisions the roundabout / intersection had, and still has, the capability to isolate a significant portion of Clearwater Beach and make evacuation thereof difficult, if not impossible, should the roundabout be compromised by accident or mishap or in the event of an emergency.

7) That by the Transfer Agreement between the City and the State the cure for any deficiencies or shortcomings was for the affected roadway to be reverted back to the State for reconfiguration in a manner appropriate to achieve the State's own standards of vehicular movement.

8) That Plaintiff's Petition For Peremptory Writ Of Mandamus was filed with the Circuit Court of the Sixth Judicial Circuit, in and for Pinellas County, Florida as Case No. 99-8463-CI-88B on the 20th day of December, 1999 and assigned to Judge David A. Demers.

9) That on or about the 4th day of January, 2000, Judge Demers did issue an order Requiring Plaintiff to file (an) Amended Petition addressing the question of Jurisdiction.

10) That upon further research and review by Plaintiff, Plaintiff concluded that the lower court did not have jurisdiction in the matter as only the Florida Supreme Court could effect the remedy sought by Plaintiff, to wit, the ordering of the Secretary of Transportation to retake the affected roadways for reconstruction in a manner consistent with the State's own guidelines.

11) That in furtherance of the conclusion expressed in 14, above, Plaintiff did amend Plaintiff's Petition for Peremptory Writ of Mandamus and re-file it with the Florida Supreme Court on or about the 13th day of January, 2000, where it stands as Case No: SC 00-93 (a copy of which is attached and made a part hereto as EXHIBIT 3).

12) That on or about the 4th day of April, 2000 the Florida Supreme Court, under the hand of the Acting Clerk of the Court, Debbie Causseaux, did issue an ORDER TRANSFERRING PETITION (a copy of which is attached and made a part hereto as EXHIBIT 4) directing that the Plaintiff's Petition for Peremptory Writ of Mandamus be transferred back to the Circuit Court of the Sixth Judicial Circuit, in and for Pinellas County, on the assumption and / or presumption that Plaintiff "appears" to seek Declaratory Relief under Chapter 86 and not, as Plaintiff contends, relief affected by a Peremptory Writ of Mandamus.

13) That on or about the 12th day of April, 2000, Plaintiff did file with the Supreme Court of the State of Florida a RESPONSE TO ORDER TRANSFERRING PETITION (copy of which is attached and made a part hereto as EXHIBIT 5) specifically rejecting the Order issued under the hand of the Acting Clerk of the Court and requesting that the Petition for (a) Peremptory Writ of Mandamus be placed before the Court for it's consideration.

14) That Plaintiff's Response to Order Transferring Petition was accepted by the Court as a Motion for Rehearing.

15) That subsequently on or about the 23rd day of May, 2000 the Court did issue under the hand of the Clerk of the Court an Order denying Plaintiff's Petition for (a) Motion for Rehearing (a copy of which is attached and made a part hereto as EXHIBIT 6).

SECOND CAUSE OF ACTION

16) The Plaintiff, George Lawson Kelly, repeats and realleges the allegations in paragraphs 1 through 19 and same are incorporated herein by reference as though pleaded in full and further alleges:

17) That on or about the 17th day of April, 2000, Plaintiff did address a PETITION FOR REVIEW (a copy of which is attached and made a part hereto as EXHIBIT 7) to the individually named members of the Florida Supreme Court where such Petition sought to have the individually named members of the Court confront and address what to the Plaintiff / Petitioner were outrageous illegalities, or demonstrated ignorance of the law, on the part of the Clerk and / or Acting Clerk of the Court.

18) That Plaintiff did specifically contend in the Petition for Review that the first responsibility of the Secretary of Transportation is to provide for safe passage on the roadways which constitute the State Road System and never more so than when these roadways are expected to be used as Emergency Hurricane Evacuation Routes.

19) That Plaintiff's Petition for Peremptory Writ of Mandamus was a deliberate and specific effort to have the Court compel the Secretary of Transportation to fulfill this primary responsibility as it relates to that portion of State Road 60 at the entrance to Clearwater Beach by having the

20) State retake the affected roadways and reconstruct them in accordance with the State's own standards.

21) That the Order Transferring Petition issued under the hand of the Acting Clerk of the Supreme Court was a deliberate and specific attempt to thwart the progress of Plaintiff's Petition for Peremptory Writ of Mandamus by redirecting it to the Sixth Judicial Circuit, in and for Pinellas County, on the patently false assumption that Plaintiff was somehow seeking declaratory relief which would fall as a matter of course under Chapter 86, Florida Statutes.

22) That this patently false assumption that Plaintiff was somehow seeking declaratory relief was itself an outrageous act of Obstruction of Justice as "even a first year law student would know the difference between an effort to secure a Declaratory Judgment and a Peremptory Writ of Mandamus. The first being about rights and the second being about responsibilities - FAILED responsibilities and never more so than is the case presented in Plaintiff's Petition For Peremptory Writ of Mandamus."

23) That the first duty of a Jurist is to preserve and uphold the integrity of the Court and never more so than when the Jurist is a Justice of a Supreme Court.

24) That none of the individually named members of the Florida Supreme Court did respond in any manner to Plaintiff / Petitioner's Petition for Review where such a non-response response constituted a willful and deliberate denial with prejudice.

THIRD CAUSE OF ACTION

25) The Plaintiff, George Lawson Kelly, repeats and realleges the allegations in paragraphs 1 through 27 and same are incorporated herein by reference as though pleaded in full and further alleges:

Document 9:7

26) That on or about the 27th day of February, 2001, Plaintiff did file for a Peremptory Writ of Mandamus (a copy of which is attached and made a part hereto as EXHIBIT 8) where such filing was constituted as Case No. 01-001524-CI-15 and where such filing did seek to have the Court order the City of Clearwater to comply with the provisions of the City Charter which specifically compels the City to provide for a referendum in matters or instances where the City sought to spend in excess of $1,000,000.

27) That a Peremptory Writ of Mandamus is a Writ of the First Order and is, by law, meant to be addressed and dealt with in an expeditious manner.

28) That as of the date of the submission of this action there has been no response on the part of Judge Crockett Farnell to address the issues raised in Plaintiff's Petition for a Peremptory Writ of Mandamus.

29) That the rationale behind the deliberate delay on the part of Judge Crockett Farnell et. al. relates specifically to a beach redevelopment program which has been challenged by Plaintiff where such a redevelopment program would see in excess of 80-million dollars of "development rights" passed from the City to private developers with no cash return to the City and it's taxpayers, but which would at the same time see the City spend additional millions of dollars in furtherance's of said development program where such expenditures in the absence of an approved vote by referendum constitutes a specific violation of the City's Charter.

30) That the granting of the Plaintiff / Petitioner's Petition for Peremptory Writ of Mandamus in the above styled action would cause the development program as currently structured to be put to a referendum where a NO vote

would most likely lead to a more appropriate development program.

31) That the failure on the part of Judge Crockett Farnell to address Plaintiff's Petition for (a) Peremptory Writ of Mandamus constitutes a willful and deliberate denial with prejudice.

SUMMARY

32) In the first instance Plaintiff has sought to have the City, the State and, finally, the Supreme Court of the State of Florida confront and address the issues of vehicular movement and safety associated with the roundabout / intersection at the entrance to Clearwater Beach.

33) It is the specific contention of Plaintiff that the roundabout / intersection constitutes an ongoing hazard which carries with it the very real potential to see a significant portion of Clearwater Beach become isolated and made inaccessible by accident, mishap or the ravages of a hurricane.

34) It is the further contention of Plaintiff that the responsibility for providing safe passage on the roadways of the state rests with the Secretary of the Florida Department of Transportation and he, aided and abetted by his officials, by the City and it's officials, and the officials and officers of the Supreme Court of the State of Florida, has failed to exercise this responsibility as regards the roundabout / intersection at the entrance to Clearwater Beach thus placing the City and it's taxpayers at considerable and continuing risk.

35) In the second instance Plaintiff has sought to have the City follow it's own Charter requirements in the matter of expenditures of funds in excess of one million dollars and this effort on the part of Plaintiff has been willfully,

deliberately and maliciously blocked by one Judge Crockett Farnell in association with the City and it's agents.

CONCLUSION

36) It is the specific contention of Plaintiff that Defendants herein, under color of the laws of the State of Florida and statutes, customs, or usages of the State of Florida did purposefully conspire and cause or permit Plaintiff to be subjected to the deprivation of rights, privileges and immunities secured to Plaintiff by the Constitution and Laws of the United States.

37) It is the further contention of Plaintiff that the object of the conspiracy was to deprive, either directly or indirectly, Plaintiff of Plaintiff's first amendment Right of Petition and of the equal protection of the laws or the equal privileges and immunities under the laws and, further, that the conspiracy was and is motivated by an invidious animus towards Plaintiff that would substantially obviate Plaintiff's legitimate efforts and concerns.

38) Plaintiff contends specifically that there were numerous acts committed in furtherance of this conspiracy the three most egregious of which were:

a. Defendants' willful, deliberate and malicious attempts to shunt Plaintiff's efforts aside by insidiously mislabeling Petitioner's Petition for a Peremptory Writ of Mandamus as an effort to secure Declaratory Relief where "even a first year law student would know the difference between an effort to secure a Declaratory Judgment and a Writ of Mandamus. The first is about rights and the second is about responsibilities – FAILED responsibilities and never more so than in the case presented by Plaintiff in Plaintiff's

Petition for Peremptory Writ of Mandamus" and;

b. Defendants', in this instance, the Justices of the Florida Supreme Court, willful, deliberate, and malicious failure to address Plaintiff's concerns as expressed in Plaintiff's Petition for Review and;

c. Defendant, Judge Crockett Farnell's willful, deliberate and malicious failure to address Plaintiff's concerns as expressed in Plaintiff's Petition for Peremptory Writ of Mandamus.

39) ***The right to Petition carries with it the right to have the Petition acknowledged and answered lest it constitute no right at all.***

RELIEF SOUGHT

40) WHEREFORE, Plaintiff respectfully prays, that upon Judgment by the Court, relief will be awarded:

41) for Plaintiff's attorney's fees

42) for Plaintiff's costs and disbursements in this action

43) for such other and further relief as the Court may deem just and equitable in bringing this matter before the Court, and;

Plaintiff further prays that the Court will award at the determination of the Jury such damages and punitive damages that would see the principle agents of conspiracy subject to punitive damages of not less than one million dollars, individually, and that those individuals who participated in a peripheral manner be subject to punitive damages of not less than 50-thousand dollars.

Further, at the determination of the Jury and the concurrence of the Court, the individually named members

of the Florida Supreme Court shall be subject to punitive damages in an amount not less than one million dollars each.

Plaintiff specifically requests that the matters as presented be put to a Jury.

So prays the Plaintiff.

Submitted by: George Lawson Kelly
George Lawson Kelly, Plaintiff pro se
522 Cleveland Street
Clearwater, FL 33755
727.442.5093

Document 10:1; Filed 7/31/01

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
Tampa Division

GEORGE LAWSON KELLY
Plaintiff,

v. Case No. 8:01-CV-T-24 TBM

CHIEF JUSTICE CHARLES T. WELLS,
et al.,
Defendants.
_____/

DEFENDANT CHIEF JUSTICE WELLS' AND THE ASSOCIATE JUSTICES AND NAMED EMPLOYEES OF THE SUPREME COURT OF FLORIDA'S MOTION TO DISMISS OR, ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT

The defendants Chief Justice Charles T. Wells, the associate justices and named employees of the Supreme Court of Florida, by and through undersigned counsel, hereby move to dismiss pursuant to Fed.R.CivP. 12 (b) for lack of subject matter and personal jurisdiction, and failure to state a claim upon which relief can be granted. Alternatively, these defendants move pursuant to Fed.R.Civ.P.56 (b) for summary judgment in their favor, as there is no disputed issue of material fact, and these defendants are entitled to judgment as a matter of law.

The essence of plaintiff's claim is that the Supreme Court of Florida either failed or refused to issue a writ of mandamus directed to a portion of state Road 60 in the Clearwater, Pinellas County, area-a matter of purely local concern.

Document 10:2

Without addressing plaintiff's standing in state court under Florida jurisprudence,[1] or his entitlement to a writ of mandamus,[2] plaintiff's lawsuit must be dismissed for the following reasons:

1. Plaintiff fails to allege a case or controversy under federal law,

2. This court lacks jurisdiction to in effect review judgments from a states highest court, and

3. Plaintiff's damages claim is barred by Eleventh Amendment and judicial immunity.

As to the first point, Article III of the United States Constitution requires that parties seeking to invoke the power of the federal courts must allege an actual case or controversy. O'Shea v. Littleton, 414 U.S. 488 91974). See also Jacobs v. The Florida Bar, 50 F. 3d 901, 903 (11th Cir. 1995). In his complaint, plaintiff fails to allege any claimed deprivation of a right, privilege or immunity, or any claim whatever, cognizable under federal law. At most, plaintiff alleges some disagreement over a local road issue and the Florida Supreme Court's decision with respect to his filings.

---

[1] A person seeking to raise a constitutional question must show a direct, personal interest in either himself (herself) or the class represented in defeating the law asserted to be unconstitutional. Even though a statute is unconstitutional, only those who have a right to raise its unconstitutionality may invoke the aid of the courts to have it judicially set aside. Thus, the constitutionality of legislation is open to attack only by one whose rights or duties are adversely affected or prejudiced by it. State ex rel. Utilities Operating Co. v. Mason, 172 So.2d 225 (Fla.1965). The constitutionality of the statute must be attacked, if at all, by one who comes within its ambit. Not only must a person be adversely affected by a statute in order to challenge its constitutionality, but he or she must also be similarly affected by the part of the statute that is attacked. Henderson v. Antonacci, 62 So.2d 5 (Fla.1952).

[2] To be entitled to the issuance of a writ, a petitioner must show that he has a clear legal right to the performance of a clear legal duty by a public officer, and that he has no other legal remedies available to him. Hatten v. State, 561 So. 2d 562, 563 (Fla. 1990).

This does not reach the requisite level necessary to establish the case or controversy condition precedent to asserting a claim for which relief can be granted.

As to the second point, it is well-established that "a United States District Court has no authority to review final judgments of a state court in judicial proceeding." District of Columbia Court of Appeals v. Fedman, 460 U.S. 462, 482 (1983); Rocker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923). Under the Rooker-Feldman doctrine, a decision of a states highest court is reviewable only by the Supreme Court of the Untied States. In essence, plaintiff is asking this court to direct the Supreme Court of Florida to issue a writ of mandamus. This cannot be done.

As to the third point, actions for damages in federal court against state officials sued in their official capacities are barred by the Eleventh Amendment. See Green v. Mansour. 474 U.S. 64, 68 (1985); Sandoval V. Hagan, 197 F. 3d 484 (11th Cir. 1999). And judges enjoy absolute immunity from damages for acts performed in their judicial capacities. Dennis v. Sparks, 449 U.S. 24, 27 91980).

Accordingly, for the reasons set out above, these defendants move for dismissal with prejudice, as there is no set of facts that plaintiff can allege that will or may alter the outcome of this case; alternatively, these defendants move for summary judgment in their favor.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

George Waas
Assistant Attorney General
Fla. Bar No. 129967

Document 10:4

PL-01 The Capitol
Tallahassee, Florida 32399-1050
(850) 414-3662
(850) 488-48-4872 (FAX)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to George Lawson Kelly, 522 Cleveland Street, Clearwater, Florida 33755, this 31st day of July, 2001.

_____
George Waas

Document 11:1; Filed 7/24/2001

IN THE UNTIED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GEORGE LAWSON KELLY,

CASE NO. 8:01-CV-1162-T-24 TBM

Plaintiff,

vs.

CHIEF JUSTICE CHARLES T. WELLS,

et al.,

Defendants.

_____/

RESPONSE TO DEFENDANT CHIEF JUSTICE WELLS' AND THE ASSOCIATE JUSTICES AND NAMED EMPLOYEES OF THE SUPREME COURT OF FLORIDA'S REPLY IN SUPPORT OF MOTION TO DISMISS AMENDED COMPLAINT OR, ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT

The Plaintiff, George Lawson Kelly, having read through Counsel for the Defendants Reply as above would respond and answer:

1) To the Counsel for Defendants oft repeated claim that Plaintiff is somehow lost traveling in circles in a roundabout and that this case as presented by the Plaintiff is **ALL** about a roundabout; Plaintiff would once again reiterate that ***this*** case is **NOT** about a roundabout

but about the violation and infringement of Plaintiffs' rights to Due Process and Equal Protection.

2) A case, presented as a claim, supported by arguments, seeking relief or redress to make oneself "whole" is what a lawsuit is all about.

The "parts" must relate to the whole.

If you claim an injury or injustice then you seek redress or relief that would allow you to overcome ***that*** injury or ***that*** injustice.

If someone sues you for the damages you did to their car they cannot ask the Court to compel you to fix the roof of their condo or house.

The case and the claim and the relief sought (to make oneself whole) must bear some immediate and direct relationship one to the other.

This singular and simple point seems to utterly escape Counsel for Defendants as he strives mightily to portray Plaintiff's case as something to do about a roundabout.

It is not.

3) It is specifically a case, presented as a claim that argues that the Justices of the Florida Supreme Court used an instrument of the Court (an Order Transferring Petition) to willfully, deliberately and with malice aforethought advantage the Defendants in a case before the Court at the expense of the Plaintiff.

4) The relief sought by the Plaintiff in the originally filed case could **ONLY** have been provided by the Florida Supreme Court as **ONLY** the Florida Supreme Court can be shown to have the jurisdictional capacity to compel the Secretary for the Florida Department of Transportation to retake the affected roadways and bring

them into compliance with the State's own standards of mobility and safety as those standards relate to the elements necessary to provide for safe passage on a Major Hurricane Evacuation Route.

5) It was both by and at Law the duty, obligation and responsibility of the Justices of the Florida Supreme Court to address the issues raised in the case presented to the Court by Plaintiff.

6) The Florida Supreme Court interceded in the matter of George Lawson

Kelly vs. The Florida Department of Transportation et. al and did issue the Order Transferring Petition and it is ***this*** Order and the effects of ***this*** corrupt edict from which Plaintiff now seeks redress in ***this*** (Federal) court.

In conclusion, this is a case about rights and not roundabouts and Counsel for Defendants continuing efforts to have this Court view the matter as the latter and not the former leads the Plaintiff to question whether the Counsel for the Defendants is simply ignorant of the composite parts of a lawsuit or if he is simply trying to provide cover for what he hopes will be a favorable ruling.

The Florida Supreme Court did intercede and entertain jurisdiction. It did issue an Order that would *NOT* have provided Plaintiff any possible measure of relief or redress as that relief or redress could be related to the original claim made by the Plaintiff. That Order Transferring Petition did advantage the one party over the other in a case before the Court and that Order did violate Plaintiff's rights to Due Process and Equal Protection and did of itself constitute a singular act of Obstruction of Justice

For these specific reasons and for all the reasons set out above and in Plaintiffs original response, Plaintiff

respectfully prays that this Court will deny Defendant's Motion for Dismissal and/or Summary Judgment.

So prays the Plaintiff.

George Lawson Kelly, Plaintiff
George Lawson Kelly
522 Cleveland Street
Clearwater, FL 33755
727.442.5093

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to George Waas, Assistant Attorney General, PL-01 The Capitol, Tallahassee, Florida 32399-1050, this ____ of August, 2001.

George Lawson Kelly, Plaintiff

George Lawson Kelly
522 Cleveland Street
Clearwater, FL 33755
727.442.5093

Document 12:1; Filed 7/31/01

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GEORGE LAWSON KELLY,

CASE NO. 8:01-CV-1162-T-24

TBM

Plaintiff,

vs.

CHIEF JUSTICE CHARLES T. WELLS,
Et al.,

Defendants.

_____/

DEFENDANT CHIEF JUSTICE WELLS' AND THE ASSOCIATE JUSTICES AND NAMED EMPLOYEES OF THE SUPREME COURT OF FLORIDA'S REPLY IN SUPPORT OF MOTION TO DISMISS AMENDED COMPLAINT OR, ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT

The defendants Chief Justice Charles T. Wells, the associate justices of the Supreme Court of Florida (Justices Major B. Harding, Leander J. Shaw, Jr., Harry Lee Anstead, Barbara J. Pariente, R. Fred Lewis and Peggy A. Quince) and named employees of the Supreme Court of Florida Thomas D. Hall, Clerk, and Debbie Causseaux, Acting Clerk), by and through undersigned counsel, hereby reply in support of their motion to dismiss the amended complaint for lack of subject matter and personal jurisdiction, and failure to state a claim upon which relief can be granted. Alternatively,

these defendants reply in support of their motion for summary judgment in their favor, as there is no disputed issue of material fact, and these defendants, along with defendant Judge Farnell, are entitled to judgment as a matter of law.

In his response, plaintiff first represents that this is not purely a local matter, but one of great constitutional import, and then proceeds to explain that at issue is the construction of a

"roundabout intersection at the entrance to Clearwater Beach a matter of local concern. The fact that plaintiff disagrees with the design characteristics does not convert his dispute into a federal question over which this court may exercise jurisdiction.

And the fact that the Florida courts have not interceded similarly does not create the requisite case or controversy so as to permit this court to exercise its jurisdiction over the matter.

There is no federal law violation demonstrated here when a state court decides not to entertain jurisdiction solely because a party brings an action.

Plaintiff may voice his disagreement with appropriate local authorities and other administrative officials, after which he will be entitled to judicial review in state court. What he cannot do, for the reasons previously set out in the alternative motions to dismiss and for summary judgment, is to bring his disagreement over the design of a municipal road into federal court under the facts as he has alleged.

All judicial and quasi-judicial defendants represented by the undersigned remain entitled to dismissal of this action or summary judgment in their favor, as more specifically set out in the alternative motions, which are re-averred here.

Respectfully submitted,

Document 12:3

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

George Waas
Assistant Attorney General
Fla. Bar No. 129967
PL-01 The Capitol
Tallahassee, Florida 32399-1050
(850) 414-3662
(850) 488-4872 (FAX)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to George Lawson Kelly, 522 Cleveland Street, Clearwater, Florida 33755, this 31st day of July, 2001

George Waas

Document 13:1; Filed 8/7/2001

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GEORGE LAWSON KELLY,

CASE NO. 8:01-CV-1162-T-24
TBM

Plaintiff,

vs.

CHIEF JUSTICE CHARLES T. WELLS,
et al.,

Defendants.

_____/

RESPONSE TO DEFENDANT CHIEF JUSTICE WELLS' AND THE ASSOCIATE JUSTICES AND NAMED EMPLOYEES OF THE SUPREME COURT OF FLORIDA'S REPLY IN SUPPORT OF MOTION TO DISMISS AMENDED COMPLAINT OR, ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT

The Plaintiff, George Lawson Kelly, having read through Counsel for the Defendants Reply as above would respond and answer:

1) To the Counsel for Defendants oft repeated claim that Plaintiff is somehow lost traveling in circles in a roundabout and that this case as presented by the Plaintiff is **ALL** about a roundabout; Plaintiff would once

again reiterate that ***this*** case is **NOT** about a roundabout but about the violation and infringement of Plaintiffs' rights to Due Process and Equal Protection.

2) A case, presented as a claim, supported by arguments, seeking relief or redress to make oneself "whole" is what a lawsuit is all about.

The "parts" must relate to the whole.

If you claim an injury or injustice then you seek redress or relief that would allow you to overcome ***that*** injury or ***that*** injustice.

If someone sues you for the damages you did to their car they cannot ask the Court to compel you to fix the roof of their condo or house.

The case and the claim and the relief sought (to make oneself whole) must bear some immediate and direct relationship one to the other.

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It is not.

3) It is specifically a case, presented as a claim that argues that the Justices of the Florida Supreme Court used an instrument of the Court (an Order Transferring Petition) to willfully, deliberately and with malice aforethought advantage the Defendants in a case before the Court at the expense of the Plaintiff.

4) The relief sought by the Plaintiff in the originally filed case could **ONLY** have been provided by the Florida Supreme Court as **ONLY** the Florida Supreme Court can be shown to have the jurisdictional capacity to compel the Secretary for the Florida Department of

Transportation to retake the affected roadways and bring them into compliance with the State's own standards of mobility and safety as those standards relate to the elements necessary to provide for safe passage on a Major Hurricane Evacuation Route.

5) It was both by and at Law the duty, obligation and responsibility of the Justices of the Florida Supreme Court to address the issues raised in the case presented to the Court by Plaintiff.

6) The Florida Supreme Court interceded in the matter of George Lawson Kelly vs. The Florida Department of Transportation et. al and did issue the Order Transferring Petition and it is ***this*** Order and the effects of ***this*** corrupt edict from which Plaintiff now seeks redress in ***this*** (Federal) court.

In conclusion, this is a case about rights and not roundabouts and Counsel for Defendants continuing efforts to have this Court view the matter as the latter and not the former leads the Plaintiff to question whether the Counsel for the Defendants is simply ignorant of the composite parts of a lawsuit or if he is simply trying to provide cover for what he hopes will be a favorable ruling.

The Florida Supreme Court did intercede and entertain jurisdiction. It did issue an Order that would ***NOT*** have provided Plaintiff any possible measure of relief or redress as that relief or redress could be related to the original claim made by the Plaintiff. That Order Transferring Petition did advantage the one party over the other in a case before the Court and that Order did violate Plaintiff's rights to Due Process and Equal Protection and did of itself constitute a singular act of Obstruction of Justice

For these specific reasons and for all the reasons set out above and in Plaintiffs original response, Plaintiff

respectfully prays that this Court will deny Defendant's Motion for Dismissal and/or Summary Judgment.

So prays the Plaintiff.

_____

George Lawson Kelly, Plaintiff
George Lawson Kelly
522 Cleveland Street
Clearwater, FL 33755
727.442.5093

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to George Waas, Assistant Attorney General, PL-01 The Capitol, Tallahassee, Florida 32399-1050, this ____ of August, 2001.

_____

George Lawson Kelly,
Plaintiff

Document 14:1; Filed 8/15/01

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
Tampa Division

GEORGE LAWSON KELLY
Plaintiff,

v. Case No. **8:01-Civ-T-24BM**

CHARLES T. WELLS, ET AL.,
Defendants.
_____/

DEFENDANTS' MOTION TO DISMISS

COME NOW the Defendants, *CITY OF CLEARWATER,* Mayor *BRIAN AUNGST,* Commissioners *ED HART, BOB CLARK, ED HOOPER, J.B. JOHNSON,* former City Manager *MICHAEL ROBERTO* and City Attorney *PAMELA AKIN,* and move this court pursuant to Rule 12(b)(6), FED. R. CIV. P., to dismiss this action against them for the following reasons:

1. Rule 8, FED. R. CIV. P., provides that the complaint shall set forth a "short and plain statement of the claim showing that the [plaintiff] is entitled to relief," against the defendants.

2. By searching the "four corners" of the complaint defendants have determined that plaintiff's claim is as follows:

(a) Plaintiff asserts a violation of his First Amendment right of free petition. *See, Amended Complaint at paras. 4 and 39.*

(b) Plaintiff asserts a violation of his Fourth Amendment right to equal protection of the law. *See, Amended Complaint at paras. 4 and 39.*

(c) Plaintiff's complaint arises from the construction of a public works project constructed by the *CITY OF CLEARWATER*. That project is commonly know as the "roundabout" - a traffic control device constructed at the west terminus of Causeway boulevard. Plaintiff is not happy with the project.

(d) Plaintiff's complaint, however, does not assert a claim based upon injuries caused in some way by the roundabout, but asserts violations of his rights caused by the "failure" of the Florida Supreme Court to adequately address his "Petition for a Peremptory Writ of Mandamus" *[see, Amended Complaint at paras. 6 (First Cause of Action), 16-19, and 40(a)]*; and his "Petition for Review" *[see, Amended Complaint at paras. 21 (Second Cause of Action), 24-27, and40(b)]*; and by the failure of the Pinellas County Circuit Court to adequately address his "Peremptory Writ of Mandamus" *[see, Amended Complaint at paras. 29 (Third Cause of Action), 34, and 40(c)]*.

3. Plaintiff has failed to allege a cognizable cause of action against these defendants.

4. Plaintiff has sued defendants in their individual capacities and the actions taken by the defendants of which plaintiff complains were legislative acts to which the doctrine of absolute legislative immunity is applicable.

5. The individual defendants are also sued in their official capacities. Inasmuch as plaintiff has also sued the *CITY OF CLEARWATER*, the individual defendants are not necessary parties to this action and suing them was inappropriate.

6. Plaintiff fails to allege an injury in fact; fails to allege concrete, particularized harm that is either actual or imminent; fails to allege that the injury is causally linked, or fairly traceable, to the above defendants; and fails to allege

that the injury he complains of can likely be redressed by the court.

7. Plaintiff fails to allege the existence of any specific constitutional or statutory right, federal or state, which these defendants have violated.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via regular U.S. mail to George Lawson Kelly, 522 Cleveland Street, Clearwater, Florida 33755, and George Waas, Esq., PL-01, The Capitol, Tallahassee, Florida 32399-1050, this 15th day of August, 2001.

Paul Richard Hull
Assistance City Attorney

P.O. Box 4748
Clearwater, Florida 33758-4748
(727) 562-4010
Florida Bar no. 0486108
ATTORNEY FOR DEFENDANTS *CITY OF CLEARWATER*, Mayor *BRIAN AUNGST*, Commissioners *ED HART, BOB CLARK, ED HOOPER, J.B. JOHNSON*, former City Manager *MICHAEL ROBERTO* and City Attorney *PAMELA AKIN*

Document 15:1; Filed 8/15/01

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
Tampa Division

GEORGE LAWSON KELLY
Plaintiff,

v. Case No. **8:01-Civ-T-24BM**

CHARLES T. WELLS, ET AL.,
Defendants.
_____/

DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS

Defendants, *CITY OF CLEARWATER, Mayor BRIAN AUNGST,* Commissioners *ED HART, BOB CLARK, ED HOOPER, J.B. JOHNSON,* former City Manager *MICHAEL ROBERTO* and City Attorney *PAMELA AKIN,* file this memorandum of law in support of their motion to dismiss.

I. Introduction.

Defendants, in seeking to dismiss the complaint for failure to state a claim under Rule 12(b)(6), are aware that "[d]ismissal of a claim on the basis of barebones pleading is a precarious disposition with a high mortality rate." *International Erectors, Inc. v. Wilhoit Steel Erectors and Rental Service,* 400 F.2d 465, 471 (5th Cir 1968). They are further aware that a complaint will not be dismissed for failure to state a claim unless it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gilbson,* 355 U.S. 41, 435-46 78 S.Ct. 99, 102, L.Ed.2d 80 (1957); *Williams v. Bierman,* 46 F.Supp.2d 1262 (M.D.Fla. 1999). Moreover, they

understand that, for purposes of deciding a motion to dismiss, the material allegations of a plaintiff's complaint are taken as true. *Aquatherm Indus. v. Florida Power & Light*, 971 F.Supp. 1419, 1424 (M.D.Fla.1997). This case, however, is one of those cases in which, even assuming plaintiff's allegations to be true, he cannot prove a set of facts which will entitle him to relief.

II. Argument

a. Plaintiff has stated no cause of action against these defendants.

In his complaint, plaintiff voices his concern over a public works project constructed by the *CITY OF CLEARWATER*. That project is known as the "roundabout." The roundabout is a traffic control device constructed at the west terminus of Causeway Boulevard and serves as the intersection for several streets on "Clearwater Beach." Plaintiff is obviously not pleased with the result of that project.

Plaintiff does not allege that he has suffered injuries as a result of the roundabout. What plaintiff asserts is a violation of his rights caused by the "failure" of the Florida Supreme Court to adequately address his "Petition for a Peremptory Writ of Mandamus" [*see, Amended Complaint at paras. 6 (First Cause of Action), 16-19, and 40(a)*]; and his "Petition for Review" [see, *Amended Complaint at paras. 21 (Second Cause of Action), 24-27, and 40(b)*]. Plaintiff also contends that the Pinellas County Circuit Court failed to adequately address his "Peremptory Writ of Mandamus" *[see, Amended Complaint at paras. 29 (Third Cause of Action), 34, and 40(c)]*.

He does not allege any action by these defendants that affected his First Amendment right of free petition or his Fourth Amendment right to equal protection. These defendants are not even alleged to have played a part in his litigation in state court.

Document 15:3

In order to successfully plead a case under § 1983, plaintiff must show that the conduct complained of was "(1) committed by the [defendants] acting under color of state law, and 92) deprived [plaintiff] of rights, privileges, or immunities secured by the Constitution or laws of the United States." *Williams v. Bierman,* supra at 1266. Plaintiff has neither pled that defendants committed "acts under color of state law" nor pled that the named defendants somehow deprived him of his rights.

b. Defendants are entitled to absolute legislative immunity.

Plaintiff sues these defendants (except for the *CITY)* in their individual capacities. One is the mayor, four are present or former city commissioners, one is a former city manager, and one is the present city attorney. All are evidently sued for their part in the roundabout.[1] No allegations are made specifically with respect to these defendants either as individuals or as a group. Since they are not alleged to have played a part in his denial of due process and right of petition before the state courts, he must be complaining about something they did as city officials.[2]

With regard to the suit against these defendants in their individual capacities, local government officials are entitled to absolute immunity from suit under 42 U.S.C.A. § 1983 for "all actions taken in the sphere of legitimate legislative activity." *Bogan v. Scott-Harris,* 522 U.S. 44, 54, 118 S.Ct. 966, 972, 140 L.Ed.2d 79 (1998) (quoting *Tenney v. Brandhove,* 341 U.S. 367, 376, 71 S.Ct. 783, 788, 95 L.Ed. 1019 (1951)); Housing Investors, Inc. v. City of Clanton, Ala., 68 F.Supp2d 1287, 1289 (M.D.Ala. 1999). "This immunity is broad-

---

[1] This is a presumption on the writer's part.

[2] If this amounts to speculation, counsel apologizes. It is the best he can do under the circumstances.

sweeping and protects its bearer from liability for damages as well as for declaratory and injunctive relief." *Housing Investors, Inc., supra at 1295; Supreme Court of Va. V. Consumers union,* 446, U.S. 719, 731-32, 100 S.Ct. 1967, 1974, 64 L.Ed.2d 641 (1980).

Legislative immunity is accorded not merely to legislators (or commissioners) per se, but also to those government officials who are sued for performing legislative functions. *Bogan,* 523 U.S. at 55, 118 S.Ct. at 973; *Woods v. Gamel,* 132 F.3d 1417, 1419 (11th Cir. 1998).

The named defendants are sued presumably because of their actions related to the roundabout. Since there are no allegations that they actually designed or constructed it, we must assume they were sued because they approved its construction contrary to plaintiff's wishes.

Courts have held that acts such as voting, *Kilbourn v. Thompson,* 103 U.S. 168, 204, 26 l.Ed. 377 (1880), debate, *United States v. Johnson,* 383 U.S. 169, 86 S.Ct. 749, 15 L.Ed.2d 681 (1966), participating in committee investigations and proceedings, *Tenney, supra,* 341 U.S. at 377-79, 71 S.Ct. at 788-89, and voting on land-use regulation, *Baytree of Inverrary Realty Partners v. City of Lauderhill,* 873 F.2d 1407, 1409 (11th Cir. 1989), have in the past been deemed legislative actions or functions and, therefore, have been protected by the doctrine of legislative immunity.

Speaking in more general terms, an act is legislative, rather than administrative or managerial, when it establishes official policy and is of general application. *Woods,, supra,* 132 F.3d at 1417.

Clearly the named defendants' actions in approving the public work known as the "roundabout" were legislative and defendants are entitled to absolute immunity.

c. Defendants are not necessary parties.

Plaintiff has also sued the named individual defendants in their official capacities and, in addition, has sued the *CITY*

OF CLEARWATER. To the extent plaintiff has sued the above named defendants in their official capacities he has essentially sued the *CITY OF CLEARWATER*. *Housing Investors, Inc., supra*, 68 F.Supp.2d at 1295; *Kentucky v. Graham*, 473 U.S. 159, 166, 105 S.Ct. 3099, 3105, 87 L.Ed.2d 114 (1985) (Official-capacity lawsuits are, "in all respects other than name, ...treated as a suit against the entity.").

While individuals may be sued in their official capacity when suit against the governmental agency is barred by the Eleventh Amendment, no such immunity issues are presented here. There is, therefore, no need to maintain suit against the named defendants in their official capacities.

d. Plaintiff lacks standing to sue.

The requirements plaintiff must meet for standing to sue are that he (1) claim an injury in fact, (2) allege concrete, particularized harm that is actual or imminent, (3) show a causal link to the defendants, and (4) that the injury can be redressed by the court. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 2136, 119 L.Ed.2d 351 (1992); *see also, Housing Investors, Inc., supra* at 1293.

The injury plaintiff alleges to have suffered is the violation of his right to "equal protection" and the violation of his "right of free petition." He fails to allege the particularized harm that is actual or imminent. And he completely fails to link or trace, even obliquely, his injury to these named defendants. The actions he complains of and for which he seeks redress were the actions of the Clerk of the Florida Supreme Court and a judge of the Sixth Judicial Circuit of Florida. Under these requirements, plaintiff does not have standing to sue.

III. Conclusion

Defendants have shown that plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Plaintiff has failed to plead a case for relief under §1983, he has failed to overcome the defense of legislative

immunity, he has no need to sue the individual defendants in their official capacities, and he lacks standing to bring suit against these defendants in the first place. Defendants are entitled to dismissal under Rule 12(b)(6).

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via regular U.S. mail to George Lawson Kelly, 522 Cleveland Street, Clearwater, Florida 33755, and George Waas, Esq., PL-01, The Capitol, Tallahassee, Florida 32399-1050, this 15th day of August, 2001.

Paul Richard Hull
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ATTORNEY FOR DEFENDANTS
CITY OF CLEARWATER, Mayor *BRIAN AUNGST*, Commissioners *ED HART, BOB CLARK, ED HOOPER, J.B. JOHNSON*, former City Manager *MICHAEL ROBERTO* and City Attorney *PAMELA AKIN*

Document 16:1; Filed 9/6/2001

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GEORGE LAWSON KELLY

Plaintiff, **CASE NO. 8:01-CV-1162-T-24-TBM**

v.

CHIEF JUSTICE CHARLES T. WELLS

et. al

Defendants

RESPONSE TO DEFENDANTS
MOTION TO DISMISS

The Plaintiff, George Lawson Kelly, having read through Counsel for the Defendant's (CITY OF CLEARWATER, Mayor BRIAN AUNGST, Commissioners ED HART, BOB CLARK, ED HOOPER, J.B. JOHNSON, former City Manager MICHAEL ROBERTO and City Attorney PAMELA AKIN) Motion to Dismiss would respond and answer:

1) Defendants, in seeking to dismiss the complaint for failure to state a claim under Rule 12(b)(6), are aware that "dismissal of a claim on the basis of barebones pleadings is a precarious disposition with a high mortality rate." *International Erectors, Inc v. Wilhoit Steel Erectors and Rental Service*, 400 F.2d 465, 471 (5th Cir.1968). They are further aware that a complaint will not be dismissed for failure to state a claim unless it appears

"beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson,* 355 U.S. 41, 45-46, 78 S. Ct. 99, 102, 2 L.Ed.2d 80 (1957); *Williams v. Bierman,* 46 F. Supp.2d 1262 (M.D.Fla. 1999). Moreover, they understand that, for purposes of deciding a motion to dismiss, the material allegations of a plaintiff's complaint are taken as true. *Aquatherm Indus. V. Florida Power & Light,* 971 F.Supp. 1419, 1424 (M.D.Fla.1997).

2) "...assuming plaintiff's allegations to be true, he cannot prove a set of facts which will entitle him to relief."

What are the specific allegations of the Plaintiff?"

a) "Plaintiff asserts a violation of his First Amendment right of free petition *See, Amended Complaint at paras. 2 and 39.*

b) Plaintiff asserts a violation of his Fourth Amendment right to equal protection of the law. *See, Amended Complaint at paras. 4 and 39."*

3) Where or from what do these allegations arise?

They arise from an Order issued by the Supreme Court of the State of Florida which had the desired (from the point of view of the Defendants - City of Clearwater and State DOT) effect of "dead ending' Plaintiff's efforts to secure relief from the risk associated with the construction and operation of what Plaintiff contends is a hazardous intersection at the entrance to a mandated State Major Hurricane Evacuation Route.

4) The specific allegation of the Plaintiff is that elements of the City, State and Supreme Court of the State of Florida did conspire to produce a result that advantaged the one party (the Defendants) in a dispute before the court at the expense of the other party (the Plaintiff.)

Document 16:3

It is the further specific allegation of the Plaintiff that the instrument used to effect the above was an Order Transferring Petition which sough to shuffle the Plaintiff off to the lower courts to pursue a Declaratory Judgment where such a judgment by definition has no enforcement provisions and for all intents and purposes no meaning and would certainly not provide the relief sought by the Plaintiff where such relief was the sole prerogative of the Florida Supreme Court.

**Allegations of conspiratorial conduct between a state court judge and Plaintiffs in a nonjury state court libel action stated a procedural due process violation which could be addressed in a § 1983 action; civil rights plaintiffs alleged covert ex parte meetings and telephone conversations during course of trial in which plaintiffs and judge conspired to produce a verdict based on extra-judicial considerations. Lipson v. Snyder, E.D.Pa.1988, 701 F.Supp. 541.*

5) To appreciate the level and degree of corruption presented by the Order Transferring Petition all a reasonable person has to do is read through Plaintiff's Petition for Writ of Mandamus to the Supreme Court of the State of Florida and then contrast the specifics of it's presentation with the deliberately loose and vague generalities of the Order Transferring Petition.

6) Plaintiff sought specifically as a measure of relief to have the Supreme Court of the State of Florida compel the Secretary of the Department of Transportation to retake a roadway from the City where such roadway constitutes the entrance to Clearwater Beach and the beginning of State Road 60 - a Major Hurricane Evacuation Route.

7) This "measure of relief" sought by the Plaintiff could ONLY be gotten from the Florida Supreme Court as per

Article V § 3(b)(8) of the Constitution of the State of Florida.

8) "...even assuming plaintiff's allegation to be true, he cannot prove a set of facts which entitle him to relief."

The principal fact in this case is the Order Transferring Petition, an Order issued by the Supreme Court of the State of Florida, an Order which the Court let stand after Review.

9) The principal fact of this fact is that the Order did advantage the one party (the Defendants) in a suit before the court at the expense of the other party (the Plaintiff) in the ONLY court which could have provided the specific measure of relief sought by the Plaintiff where such relief would have seen the Secretary of the Florida Department of Transportation retake the roadways at the entrance to Clearwater Beach and provide some measure of an intersection or intersections capable of providing "safe passage" on what is a mandated State Major Hurricane Evacuation Route.

10) In issuing the Order Transferring Petition the Florida Supreme Court exercised jurisdiction and did not challenge in any way shape or form the standing of the Plaintiff.

11) The Order itself presents two issues. One regards the substance of the Order. The other regards the effect of the order.

12) This case in this court is about the effect of the Order which plaintiff alleges and contends advantaged the one party (the Defendant's) in a dispute before the court at the expense of the other party (the Plaintiff) by in effect "dead ending" Plaintiff's efforts to secure relief.

13) As to the substance of the Order it is amenable to appeal directly to the United States Supreme Court where it represents the interesting controversy of

whether a Court, which is the ONLY court capable of granting the relief sought by Plaintiff, can willfully and deliberately avoid the issues raised and the relief sought by Plaintiff.

14) The specific cause of action in this case before this court is to be found in the Order Transferring petition and the effect it had on the Plaintiff as it unlawfully advantaged the Defendants over the Plaintiff in an action before the Florida Supreme Court.

15) Defendants may not like the claim raised by Plaintiff. Defendants may not appreciate the claim raised by Plaintiff. Defendants may disagree and challenge the claim made by Plaintiff, but to state that the Plaintiff has failed "to state a claim upon which relief can be granted" is a deliberate falsehood.

16) This is a case as Counsel for the Defendant's acknowledges about what the Plaintiff contends are specific violations of the Plaintiffs Rights of Petition and Due Process and Equal Protection.

17) As such it is a matter to be addressed in this court.

18) The question of standing raised by the Defendants in the initial case about a roundabout is one that should have been addressed by the Florida Supreme Court prior to it's issuing the Order Transferring Petition. THAT order and the challenges and claims made by the Plaintiff regarding THAT order of itself confirms standing on the part of the Plaintiff in this court in a suit regarding what Plaintiff contends are violations of Plaintiffs Civil Rights.

19) As far as the Plaintiff's standing in the case presented to the Florida Supreme Court it should be said as a matter of historical fact that the Plaintiff did not just wake up

one morning and decide that Plaintiff had nothing better to do with his time and money than to commence a suit against the City and the State.

Plaintiff had challenged the construction and the operation of the Clearwater Beach roundabout in innumerable letters to the Mayor, the members of the City Commission and the media.

Indeed, Plaintiff, at Plaintiff's own expense, addressed the issue of the roundabout in a number of full page and half page "advertisements" placed in the *Saint Petersburg Times.*

After a year of operation in which there was acknowledged to have occurred more than 450 accidents, Plaintiff sought out the proper avenue of the Law to relieve this City (and it's taxpayers) of the burden associated with the operation of a demonstrably hazardous intersection where such an intersection stands as the entryway to a mandated State Major Hurricane Evacuation Route.

As the attached and included article from the *London Daily Mirror* illustrates, this is to the best of the Plaintiff's knowledge the ONLY internationally infamous intersection in the country.

20) Because of the intersections' location the *simplest* of accidents can and almost always does compromise mobility North, South, East and West, leaving in effect only one alternate avenue of escape.

A clearly unacceptable situation and condition of imminent and continuing risk.

21) Even at this late date the City (and the State) have failed to address the fundamental design fault of the Clearwater Beach roundabout where such a design fault allows the inner of the two lanes to cross over the outer

lane to exit while still allowing for the outer lane to continue forward.

This design, allowing the inner lane to exit while not forcing the outer lane to also exit, creates in effect an intersection so that in the final analysis there are 5 (or 6) intersections following closely and quickly one after the other around the roundabouts very limited circumference. What exists, in effect, is a series of unregulated intersections. What exists, in effect, is a "defective' product that by design is predisposed to accident.

When the accidents occur the level of mobility of a mandated State Major Hurricane Evacuation Route often and almost invariably falls to ZERO!

A clearly unacceptable situation and condition of imminent and continuing risk.

22) If there was any legitimate question as to the element of risk and the Plaintiff's rights to sue to be relieved from that evident risk, that as a subject should have been addressed in an evidentiary hearing before the Florida Supreme Court or at a trial which would deal with it as a dispute about a material issue of fact.

23) The extreme good fortune that this community has enjoyed in not having the mobility of the roundabout tested in an evacuation situation does not remove or discharge the fundamental responsibility of the Secretary of the Florida Department of Transportation to provide for safe passage on the roadways of this State and never more so than when those roadways are part of a mandated State Major Hurricane Evacuation Route.

24) This lawsuit is about the deprivation of Plaintiff's rights to Petition, Due Process and Equal Protection occasioned by the issuing of an Order Transferring Petition which

had the singular and sole effect of "dead ending" Plaintiff's efforts to secure relief from the demonstrable element of continuing risk associated with the operation of the roundabout intersection at the entrance to Clearwater Beach.

25) Plaintiff does not and has not challenged the right of the Defendants to construct or operate the above mentioned roundabout nor has Plaintiff sought relief from same in this court, but Plaintiff does challenge the participation of any of the Defendants in procuring the Order Transferring Petition an Order which Plaintiff clearly contends deprived Plaintiff of Plaintiff's rights to Petition, Due Process and Equal Protection.

That is what this case is all about. Lipson v. Snyder, E.D. Pa., 1988, 701F Supp. 541 (as above);

26) Plaintiff recognizes and acknowledges that Defendants are protected from damage claims by the Eleventh Amendment and Plaintiff will, by separate instrument amend the Complaint to reflect this on the part of the above named Defendants and will pursue in it's stead as a matter of relief a Declaratory Judgment as to the participation of any of the above named Defendants in the procuring of the Order Transferring Petition, MSA Reality v. State of Ill., N.D. Ill. 1992, 794 F. Supp.267, affirmed 990 F.2d 299; Loukas v. Hofbaum, E.D. Mich 1991, 784 F. Supp. 377.

27) Assuming that "the material allegations of the plaintiff's complaint are taken as true" Defendants are certainly not entitled to dismissal prior to discovery. Aquatherm Indus. V. Florida Power and Light, 971 F. Supp. 1419, 1424 (M.D.Fla 1997)

28) The specific claim of the Plaintiff is that the Order Transferring Petition as issued by the Florida Supreme

Court was a corrupt edict which did advantage the one party (the Defendants) in a dispute before the Court at the expense of the other party (the Plaintiff) to the dispute and did of itself violate Plaintiff's rights to Petition, Due Process and Equal Protection and for this reason and the reasons set out above and in the original Complaint, Plaintiff would pray that this Court will deny Defendant's Motion to Dismiss.

So prays the Plaintiff.

George Kelly, Plaintiff Pro Se
522 Cleveland Street
Clearwater, FL 33755
727.442.5093

I HEREBY CERTIFY that a true correct copy of the foregoing has been sent via regular U.S. mail to Paul Richard Hill, Assistant City Attorney, PO Box 4748, Clearwater, FL 33758-4748 this 5th day of September, 2001.

George Kelly, Plaintiff Pro Se
522 Cleveland Street
Clearwater, FL 33755
727.442.5093

Document 17:1; Filed 8/22/01

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GEORGE LAWSON KELLY,

Plaintiff,

v. Case No. 8:01-Civ-1162-T-24TBM

CHIEF JUSTICE CHARLES T. WELLS, et al.,

Defendants.

_____/

ORDER

This cause comes before the Court on Defendants' Chief Justice Charles T. Wells, Justice Major B. Harding, Justice Leander J. Shaw, Jr., Justice Harry Lee Anstead, Justice Barbara J. Pariente, Justice R. Fred Lewis, Justice Peggy A. Quince, Thomas D. Hall, and Debbie Casseaux Motion to Dismiss Plaintiff's Amended Complaint or, Alternatively, Motion for Summary Judgment (Doc. No. 5). Judge Crockett Farnell filed a Motion to Dismiss Plaintiff's Amended Complaint, or Alternatively, Motion for Summary Judgment (Doc. No. 6), which adopted the above Defendants' Motion to Dismiss. Hereinafter, the

above named Defendants will be referred to as "Movants."[1] Plaintiff opposes these motions (Doc. No. 8).

Movants move to dismiss Plaintiff's Amended Complaint (Doc No. 2) pursuant to Red. R. Civ. P. 12(b) for lack of subject matter jurisdiction and personal jurisdiction, and failure to state a claim upon which relief can be granted. Movants also move, alternatively, for summary judgment in their favor pursuant to Fed. R. Civ. P. 56(b). Because the Court finds Plaintiff's complaint fails to allege an actual case or controversy and that it lacks subject matter jurisdiction over Plaintiff's claim, the Court need not address Movants' Motions for Summary Judgment in the Alternative.

I. Background

The claims Plaintiff George Lawson Kelly asserts in his Amended Complaint (Doc. No. 2) originate in a Petition for Writ of Mandamus filed on December 20, 1999 in the Circuit Court for the Sixth Judicial Circuit, in and for Pinellas County, Florida, which sought to have that court "compel the Secretary of the Florida Department of Transportation retake from the City of Clearwater, a certain portion of State Road 60 at the entrance of Clearwater Beach." (Doc No. 2 Plaintiff's Amended Complaint at 3). Plaintiff alleged that the

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[1] Defendants Florida Department of Transportation, Thomas F. Barry, Secretary, Florida Department of Transportation, Kenneth A. Hartman, Marianne Trussel, City of Clearwater, Brian Aungst, Mayor of Clearwater, Ed Hart, Ed Hooper, Bob Clark, J.B. Johnson, Micheal J. Roberto, and Pamela Akin have not joined in Movant's Motion to Dismiss or, Alternatively, Motion for Summary Judgment.

construction of the "roundabout" at the entrance of Clearwater Beach constituted a "demonstrable hazard" which had resulted in increased accidents and would make evacuation of Clearwater Beach "difficult, if not impossible." Id. At 4. Eventually Plaintiff "concluded that...only the Florida Supreme Court could effect the remedy sought by Plaintiff" and filed his Petition for Writ of Mandamus with the Florida Supreme Court on January 13, 2000. On April 4, 2000, the Florida Supreme Court issued an Order Transferring plaintiff's petition for Writ of Mandamus back to the Circuit Court for the Sixth Judicial Circuit. Plaintiff filed a response to the Florida Supreme Court's Order Transferring the Petition for Writ of Mandamus. The Florida Supreme Court, treating the response as a Motion for Rehearing, issued an order denying the plaintiff's Petition for Rehearing on May 23, 2000. Plaintiff alleges that Florida Supreme Court's Order Transferring Petition for Writ of Mandamus was a deliberate and specific attempt to "thwart the progress" of his petition.

Plaintiff later filed another Writ of Mandamus on February 27, 2001 with the Circuit Court. (Doc. No. 2 Plaintiff's Amended Complaint at 7). This Petition sought to have the court "order the City of Clearwater to comply with the provisions of the City Charter which specifically compels the City to provide for a referendum in matters..where the City sought to spend in excess of $1,000,000." Id. at 9. Plaintiff alleges that the Circuit Court's "failure to address" his Petition "constitutes a willful and deliberate denial with prejudice." Id. at 10. In Plaintiff's Summary of his amended Complaint, Plaintiff asserts that the Secretary

of the Florida Department of Transportation, "aided and abetted" by the City of Clearwater and the Justices and officers of the Florida Supreme Court, has failed to "exercise his responsibility as [sic] regards the roundabout/intersection at the entrance of Clearwater Beach" and has thus placed the City of Clearwater Beach and its taxpayers at "considerable and continuing risk." Id. Plaintiff further concludes that Movants and the other Defendants have conspired together to cause Plaintiff to be "subjected to the deprivation of rights, privileges and immunities." Id. at 11.

II. Standard of Review

In deciding a motion to dismiss, the district court is required to view the complaint in the light most favorable to the plaintiff. See Murphy v. Federal Deposit Ins. Corp., 208 F.3d 959, 962 (11th Cir. 2000) (citing Kirby v. Siegelman, 195 F.39 1285, 1289 (11th Cir. 1999)). A complaint should not be dismissed for failure to state a cause of action "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Bank v. Pitt, 928 F.2d 1109, 111-12 (11th Cir. 1991) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). The Federal Rules of Civil procedure "do not require a claimant to set out in detail the facts upon which he bases his claim." Conley, 355 U.S. at 47. All that is required is "a short and plain statement of the claim." Fed. R. Civ. P. 8(a)(2). The standard on a 12(b)(6) motion is not whether the plaintiff will ultimately prevail in his or her theories, but whether the

allegations are sufficient to allow the plaintiff to conduct discovery in an attempt to prove the allegations. See, Jackam v. Hospital Corp. of Am. Mideast, Ltd., 800 F.2d 1577, 1579 (11th Cir. 1986).

III. Movants' Motion to Dismiss

Movants move to dismiss Plaintiff's amended complaint based on Plaintiff's failure to allege a case or controversy under federal law and lack of subject matter and personal jurisdiction. Movants also allege that Plaintiff's claim is barred by Eleventh Amendment Immunity and judicial immunity. Plaintiff's claim is barred by Eleventh Amendment Immunity and judicial immunity. Plaintiff has filed a Motion for Leave to Amend Complaint to eliminate any claim for damages (Doc. No. 7). However, because this Court lacks subject matter jurisdiction over Plaintiff's claim, even after considering the proposed amendment, the Court finds that the motion to amend is futile and is therefore **DENIED**. Furthermore, since the Court finds the complaint fails to allege an actual case or controversy and that it lacks subject matter jurisdiction over the Plaintiff's claim as discussed below, it need not address Movants' Eleventh Amendment and judicial immunity arguments.

Movants first assert that Plaintiff has failed to allege an actual case or controversy in his complaint. In his complaint Plaintiff basically makes two assertions: (1) The Secretary of the Florida Department of Transportation and its staff, together with the Florida Supreme Court and its officers, have failed to carry out the duties of their positions and as a result have placed the citizens and taxpayers of Clearwater Beach at

"considerable and continuing risk." (Plaintiff's Amended Complaint at 10). (2) Movants have conspired together with the other Defendants to cause Plaintiff to be "subjected to the deprivation of rights, privileges and immunities." Id. at 11.

This Court finds that Plaintiff has failed to satisfy the threshold requirement of Article III of the United States Constitution that parties seeking "to invoke the power of the federal courts must allege an actual case or controversy." O'Shea v. Littleton, 414 U.S. 488, 493 (1974); see also, Jacobs v. The Florida Bar, 350 F.3d 901, 903 (11th Cir. 1995). Plaintiffs must assert "some threatened or actual injury resulting from the putatively illegal action before a federal court may assume jurisdiction." O'Shea, 414 U.S. at 493 (quoting Linda R.S. v. Richard D., 410, U.S. 614, 617 (1973)). In his complaint, plaintiff has failed to allege any threatened or actual injury other than his disagreement and frustration over a local road matter. Plaintiff has failed to demonstrate any threat of injury or harm that is real and immediate. Rather, Plaintiff's allegations that the actions of the Secretary of the Department of Transportation and the Florida Supreme Court have placed the City of Clearwater and taxpayers 'at risk' are, at best, hypothetical and conjectural. Such vague allegations are not sufficient to demonstrate a real and immediate threat of injury, and as such, fail to meet the threshold requirements of Article III. See id. at 494 (citing Golden v. Zwickler, 394 U.S. 103, 109-110 (1969)).

Second, Movants assert that this Court lacks authority to review final judgments of a state court in

judicial proceedings. Review of a decision of a stat's highest court may be had only in the United States Supreme Court on certiorari. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923); Kilpatrick v. Shaw, 70 F.3d 100, 102 (11th Cir. 1994). This Court lacks subject matter jurisdiction over Plaintiff's claim as it amounts to an appeal of the Florida Supreme Court's decision to deny Plaintiff a rehearing concerning the transfer of his petition to the Circuit Court of the Sixth judicial Circuit. In all respects, Plaintiff is asking this Court to reverse and remand to the Florida Supreme Court with directions to issue a Writ of mandamus. This Court, however, does not have subject matter jurisdiction over Plaintiff's claim and therefore lacks the authority to address Plaintiff's appeal from the decision of the Florida Supreme Court.

Accordingly, it is ORDERED AND ADJUDGED that

(1) Movants' motions to Dismiss Plaintiff's Amended Complaint or, Alternatively, Motions for Summary judgment (Doc. No. 5 & 6) are **GRANTED IN PART**:

(a) With respect to Movants' motions to Dismiss Plaintiff's Amended Complaint (Doc. No. 5 & 6), the motions are **GRANTED**; Plaintiff's claims against Chief Justice Charles T. Wells, Justice Major B. Harding, Justice Leander J. Shaw, Jr., Justice Harry Lee Anstead, Justice Barbara J. Pariente, Justice R. Fred Lewis, Justice Peggy A. Quince,

Thomas D. Hall, Debbie Casseaux, and Judge Crockett Farnel are **DISMISSED.**

(b) With respect to Movants' Alternative Motions for Summary Judgment (Doc. No. 5 and 6), the motions are **DENIED AS MOOT.**

(2) Plaintiff's Motion for Leave to Amend (Doc. No. 7) is **DENIED;**

DONE AND ORDERED at Tampa, Florida this 22 day of August, 2001.

SUSAN C. BUCKLEW
United States District Judge

Copies to:
Counsel of Record
Pro se Plaintiff

Document 18:1; Filed 8/24/01

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GEORGE LAWSON KELLY,
Plaintiff(s)

vs. **Case No. 8:01-cv-1162-T-24TBM**

CHIEF JUSTICE CHARLES T. WELLS, et al.
Defendant(s)

ORDER

In this action, Plaintiff has filed a document captioned "Response to Reply.
Upon review, the document is found to be deficient in the following respects:

Local Rule Requirements: The enclosed document does not comply with Local Rule.
Filed in the Wrong District Court: The caption of the instrument(s) indicates that *this* should have been filed in another District Court other than Middle Florida.
20-Page Rule for Briefs and Memoranda: Absent prior permission of the Court, no party shall file any brief or legal memorandum in excess of 20 pages in length.
Non-filing of Discovery Materials: As a matter of course, discovery materials shall not be filed with the Court, but may be later filed, in whole or in part, if necessary to presentation and consideration of a motion [Local Rule 3.03].

X **Non-filing of Additional Briefs or Memoranda:** Opposing party shall file and serve, within ten (10) days after being served with written motion, a brief or legal memorandum in opposition to relief requested. Unless requested by the Court, no other briefs or legal memoranda, directed to the motion, shall be filed. [Local Rule 3.01(b)].

Original Signature Required: The document requires the original signature of offering counsel.

Copies and Facsimiles Not Accepted for Filing: Copies and facsimiles of pleadings are not acceptable for filing.

JS 44(c) Civil Cover Sheet Required: A completed AO Form JS 44(c), Civil Cover Sheet, Rev. 07/89, shall accompany each civil case as a condition to the filing thereof. [Local Rule 1.05(e)].

X The Clerk is herby directed to return this pleading to counsel or pro se party.

__ The pleading shall remain as filed.

DATED at Tampa, Florida, this 23rd day of August, 2000.

United States District Judge

Copies to:

Counsel of Record
Pro Se Party

Document 19:1; Filed 10/15/01

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GEORGE LAWSON KELLY,
Plaintiff,

vs. Case No. 8:01-cv-1162-T-24TBM

CHARLES T. WELLS, et al.,
Defendants.

ORDER

This cause comes before the Court for sua sponte. On August 22, 2001, this Court entered an Order (Doc. No. 120 granting Defendants' Chief Justice Charles T. Wells, Justice Major B Harding, Justice Leander J. Shaw, Jr., Justice Harry Lee Anstead, Justice Barbara J. Pariente, Justice R. Fed Lewis, Justice Peggy A. Quince, Thomas D. Hall, Debbie Cassseaux (Doc. No. 5), and Judge Crockett Farnell (Doc. No. 6) Motions to Dismiss Plaintiff's Amended Complaint, and denying as moot Defendants' Motions for Summary Judgment (Doc. No. 5 & 6).

Defendants Chief Justice Charles T. Wells, Justice Major B. Harding, Justice Leander J. Shaw, Jr., Justice Harry Lee Anstead, Justice Barbara J. Pariente, Justice R. Fred Lewis, Justice Peggy A. Quince, Thomas D. Hall, and Debbie Casseaux filed another Motion to Dismiss Plaintiff's Amended Complaint, or

Alternatively, Motion for Summary Judgment (Doc. No. 4-1, 4-2) which is nearly identical to their other motion (Doc. No. 5). The only difference in these two motions is that document number 4 did not include a certificate of service. As such, it is **ORDERED AND ADJUDGED** that Defendants' Chief Justice Charles T. Wells, Justice Major B. Harding, Justice Leander J. Shaw, Jr., Justice Harry Lee Anstead, Justice Barbara J. Pariente, Justice R. Fred Lewis, Justice Peggy A. Quince, Thomas D. Hall, and Debbie Casseaux Motion to Dismiss Plaintiff's Amended Complaint or, Alternatively, Motion for Summary Judgment (Doc. N. 4-1, 4-2) is **GRANTED IN PART:**

(a) With respect to the Motion to Dismiss Plaintiff's Amended Complaint (Doc. No. 4-1), the motion is **GRANTED**; Plaintiff's claims against Chief Justice Charles T. Wells, Justice Major B. Harding, Justice Leander J. Shaw, Jr., Justice Harry Lee Anstead, Justice Barbara J. Pariente, Justice R. Fred Lewis, Justice Peggy A. Quince, Thomas D. Hall, and Debbie Casseaux are **DISMISSED.**

(b) With respect to the Alternative Motion for Summary Judgment (Doc. No. 4-2), the motion is **DENIED AS MOOT.**

DONE AND ORDERED at Tampa, Florida, this 15th day of October, 2001.

SUSAN C. BUCKLEW
United States District Judge

Copies to:
Counsel of Record

Document 20; Filed 10/31/01

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GEORGE LAWSON KELLY,
Plaintiff,
vs. Case No. 8:01-cv-1162-T-24TBM
CHARLES T. WELLS, et al.,
Defendants.

ORDER

Plaintiff filed this complaint on June 19, 2001 (Doc No. 1). A review of the file reveals that Plaintiff has not made service of the summons and the complaint upon Defendants Department of Transportation, Thomas F. Barry, Kenneth A. Hartman, and Marianne A. Trussel within 120 days after the filing of the complaint as required by Rule 4(m), Federal Rules of Civil procedure.

Accordingly, it is **ORDERED AND ADJUDGED** that Plaintiff shall **SHOW CAUSE** in writing on or before **November 14, 2001** for failure to perfect service within 120 das after filing the complaint. **Failure to do so will result in dismissal of this action as to Defendants Department of Transportation, Thomas F. Barry, Kenneth A. Hartman, and Marianne A Trussel without prejudice.**

DONE AND ORDERED at Tampa, Florida this 31 day of October, 2001.

SUSAN C. BUCKLEW
United States District Judge

Copies to:
Counsel of Record
Deputy Clerk

Document 21:1; Filed 11/2/01

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GEORGE LAWSON KELLY,
Plaintiff,

vs. Case No. 8:01-Civ-1162-T-24TBM
CHARLES T. WELLS,
et al.,

Defendants.
_____/

ORDER

This cause comes before the Court on Defendants', City of Clearwater, Mayor Brian Aungst, Commissioners Ed Hart, Bob Clark, Ed Hooper, and J.B. Johnson, former City Manager Michael Roberto and City Attorney Pamela Akin, (hereinafter "Defendants") Motion to Dismiss Plaintiff's Amended Complaint. (Doc. No. 11) Plaintiff opposes this motion. (Doc. O. 14).

Defendants move to dismiss Plaintiff's Amended Complaint (Doc. No. 2) pursuant to Fed. R. Civ. P. 12(b) for failure to state a claim upon which relief can be granted.

I. Background

The claims Plaintiff George Lawson Kelly asserts in his Amended Complaint (Doc. No. 2) originate in a Petition for Writ of Mandamus filed on December 20, 1000 in the Circuit court for the sixth Judicial Circuit, in and for Pinellas County, Florida, which sought to have that court "compel the secretary of he Florida Department o Transportation retake from the City of Clearwater, a certain portion of State road 60 at the entrance of Clearwater Beach." (Doc. No. 2 Plaintiff's Amended

Complaint at 3). Plaintiff alleged that the construction of the "roundabout' at the entrance of Clearwater Beach constituted a "demonstrable hazard" which had resulted in increased accidents and would make evacuation of Clearwater Beach "difficult, if not impossible." Id. at 4. Eventually Plaintiff "concluded that...only the Florida Supreme Court could effect the remedy sought by Plaintiff" and filed his Petition for Writ of Mandamus with the Florida Supreme Court on January 13, 2000. On April 4, 2000, the Florida Supreme Court issued an Order Transferring plaintiff's Petition for writ of mandamus back to the Circuit Court for the Sixth judicial Circuit. Plaintiff filed a response to the Florida Supreme Court's Order Transferring the Petition for Writ of Mandamus. The Florida Supreme Court, treating the response as a Motion for Rehearing, issued an order denying Plaintiff's Petition for Rehearing on May 23, 2000. Plaintiff alleges that the Florida Supreme Court's order Transferring Petition for Writ of Mandamus was a "deliberate and specific attempt to thwart the progress" of his petition.

Plaintiff later filed another Writ of Mandamus on February 27, 2001 with the Circuit Court. (Doc. No. 2 Plaintiff's Amended Complaint at 7). This Petition sought to have the court "order the City of Clearwater to comply with the provisions of the City Charter which specifically compels the City to provide for a referendum in matters..where the City sought to spend in excess of $1,000,000." Id. at 9. Plaintiff alleges that the Circuit
Court's 'failure to address" his Petition "constitutes a willful and deliberate denial with prejudice." Id. at 10. In Plaintiff's Summary of his Amended Complaint, Plaintiff asserts that the Secretary of the Florida Department of Transportation, "aided and abetted" by the City of Clearwater and the Justices and officers of the Florida Supreme Court, has failed to exercise his responsibility as [sic] regards the

roundabout/intersection at the entrance of Clearwater Beach" and has thus placed the City of Clearwater Beach and its taxpayers at "considerable and continuing risk." Id. Plaintiff further concludes that Defendants have conspired with the Florida Supreme Court, the Sixth judicial Circuit Court, and the Department of Transportation to cause Plaintiff to be "subjected to the deprivation of rights, privileges and immunities." Id. at 11.

II. Standard of Review

In deciding a motion to dismiss, the district court is required to view the complaint in the light most favorable to the plaintiff. See Murphy v. Federal Deposit Ins. Corp., 208 F.39 959, 962 (11th Cir. 2000) (citing Kirby v. Siegelman, 195 F.3d 1285, 1289 (11th Cir. 1999)). A complaint should not be dismissed for failure to state a cause of action "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Bank v. Pitt, 928 F.2d 1108, 1111-12 (11th Cir. 1991) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). The federal rules of Civil procedure "do not require a claimant to set out in detail the facts upon which he bases his claim." Conley, 355 U.S. at 47. All that required is "a short and plain statement of the claim." Fed.R. Civ. P.8(a)(2). The standard on a 12(b)(6) motion is not whether the plaintiff will ultimately prevail in his or her theories, but whether the allegations are sufficient to allow the plaintiff to conduct discovery in an attempt to prove the allegations. See Jackam v. Hospital Corp. of Am. Mideast, Ltd., 800 F.2d 1577, 1579 (11th Cir. 1986).

III. Defendants' Motion to Dismiss

Defendants move to dismiss Plaintiff's amended complaint based on Plaintiff's failure to state a claim upon which relief can be granted. Defendants contend that (1) Plaintiff has stated no cause of action against them, (2) that Defendants are entitled to absolute legislative immunity,

(3) that Defendants are not necessary parties, and that 94) Plaintiff lacks standing to sue. Plaintiff has filed a Motion for Leave to Amend Complaint to eliminate any claim for damages. (Doc. No. 15). However, since this Court finds Plaintiff lacks standing to sue, even after considering the proposed amendment, the Court finds that the motion to amend is futile and is therefore **DENIED**. Furthermore, because Plaintiff lacks standing to sue as discussed below, it need not address Defendants' other arguments.

Defendants assert that Plaintiff lacks standing to sue. To establish Article III standing, a Plaintiff must demonstrate that (1) he has suffered an injury-in-fact, or one which is concrete and particularized, (2) that there is a casual connection between the injury and the defendants, and (3) that he injury will be redressed by a favorable decision of the court. See Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992); Shotz v. Cates, 256 F.3d 1077, 1081 (11th Cir. 2001).

In his complaint Plaintiff basically makes two assertions: (1) the Secretary of the Florida Department of Transportation and its staff, together with the Florida Supreme Court and its officers and the City of Clearwater and its officers, have failed to carry out the duties of their positions and as a result have placed the citizens and taxpayers of Clearwater beach at "considerable and continuing risk." (Plaintiff's Amended Complaint at 10); (2) Defendants have conspire together with the Florida Supreme Court and the Department of Transportation to cause Plaintiff to be "subjected to the deprivation of rights, privileges and immunities." Id. at 11. The injuries Plaintiff alleges to have suffered as a result of his petition on the Supreme Court being transferred and later denied, is the violation of his right to equal protection and the violation of his "right of free petition." The harm Plaintiff alleges is neither actual nor imminent; rather he alleges the sort of

abstract injury which is insufficient to establish standing. Moreover, Plaintiff fails to allege a causal connection between Defendants and the injury of which he complains except for the alleged fact that Defendants were in some manner benefited by the actions of the Florida Supreme Court. As such, Plaintiff lacks standing to sue.[1]Accordingly, it is ORDERED AND ADJUDGED that
(1) Defendants' City of Clearwater, Mayor Brian Aungst, Commissioners Ed hart, Bob Clark, Ed Hooper, J.B. Johnson, former City Manager Michael Roberto, and City Attorney Pamela Akin, Motion to Dismiss Plaintiff's Amended Complaint (Doc. No. 11) is **GRANTED**.

---

[1]Standing is also an element of the case or controversy requirement of Article III and this Court is required to inquire, sua sponte, into the presence of subject matter jurisdiction if it appears it may be absent. See University of South Alabama v. the American Tobacco Co., 168 F.3d 405, 410 (11th Cir. 1999). This Court also finds that Plaintiff has failed to satisfy the threshold requirement of Article III of the United States Constitution that parties seeking "to invoke the power of the federal courts must allege an actual case or controversy." O'Shea v. Littleton, 414 U.S. 488, 493 (1974); see also, Jacobs v. The Florida Bar, 50 F.3d 901, 903 (11th Cir. 1995. Plaintiffs must assert "some threatened or actual injury resulting from the putatively illegal action before a federal court may assume jurisdiction." O'Shea, 414 U.S. at 493(quoting Linda R.S. v. Richard D., 410 U.S. 614, 617 (1973)). In his complaint, Plaintiff has failed to allege any threatened or actual injury other than his frustration over a local road matter and his disagreement over the manner in which his case was handled in the state courts. Plaintiff has failed to demonstrate any threat of injury or harm that is real and immediate. Rather, plaintiff's allegations that the actions of the Secretary of the Department of Transportation and the Florida Supreme Court have placed the City of Clearwater and taxpayers 'at risk' are, at best, hypothetical and conjectural. Such vague allegation s are not sufficient to demonstrate a real and immediate threat of injury, and as such, sail to meet the threshold requirements of Article III. See id. at 494 (citing Golden v. Zwicker, 394 U.S. 103, 109-110(1969)). Moreover, other than the alleged benefit Defendants derived from the actions of the Florida courts, Plaintiff does not even set forth any basis for Defendants' part in the 'conspiracy' between the Florida Supreme Court and the Department of transportation.

(2) Plaintiff's Motion for Leave to Amend (Doc. No. 15) is **DENIED;**

DONE AND ORDERED at Tampa, Florida, this 1st day of November, 2001.

SUSAN C. BUCKLEW
United States District Judge

Copies to: Counsel of Record
Pro se Plaintiff

Document 22; Filed 11/6/01

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GEORGE LAWSON KELLY,
Plaintiff,

vs. Case No. 8:01-cv-1162-T-24TBM

CHARLES T. WELLS, et al.,
Defendants.
_____/

ORDER

Plaintiff filed a complaint (Doc. No. 1) on June 19, 2001. A review of the file reveals that Plaintiff has not made service of the summons and the complaint upon the Defendant Charles Siemon within 120 days after the filing of the complaint as required by Rule 4(m), Federal rules of Civil procedure.

Accordingly, it is **ORDERED AND ADJUDGED** that Plaintiff shall **SHOW CAUSE**, in writing, by November 19, 2001 for failure to perfect service within 120 days after filing the complaint. **Failure to do so will result in dismissal of this action as to the Defendant Charles Siemon without prejudice.**

DONE AND ORDERED at Tampa, Florida, this 6th day of November, 2001.

SUSAN C. BUCKLEW
United States District Judge

Copies to:
Pro Se Plaintiff
Counsel of Record
Deputy Clerk

Document 23; Filed 11/27/01

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GEORGE LAWSON KELLY,
Plaintiff,
vs. Case No. 8:01-cv-1162-T-24TBM
CHARLES T. WELLS, et al.,
Defendants.

ORDER

This cause comes before the Court sua sponte. On October 31, 2001, this Court entered an Order (Doc. No. 17) directing the Plaintiff to show cause why this case should not be dismissed for lack of prosecution due to failure to perfect service within 120 days after filing the complaint. A review of the file reveals that Plaintiff has failed to file a response to the Court's Order.

Accordingly, it is **ORDERED AND ADJUDGED** that:

(1) This case is **DISMISSED** without prejudice.

(2) The Clerk is directed to **CLOSE** this case.

DONE AND ORDERED at Tampa, Florida, this 26th day of November, 2001.

SUSAN C. BUCKLEW
United States District Judge

Copies to:
All Parties and Counsel of Record

Document 24:1, Filed 12/21/2001

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GEORGE LAWSON KELLY,
CASE NO.: 8:01-CV-1162-T-24 TBM

Plaintiff,

vs.

CHIEF JUSTICE CHARLES T. WELLS,
et al.,

Defendants.

_____/

NOTICE OF APPEAL

In the above styled action the Plaintiff, George Lawson Kelly, wishes to advise and inform the Court that an Appeal will be launched in a timely fashion as to all of the variously styled Orders issued by the Court in this case with the issue dates of theses Orders being –

22 August, 2001
24 August, 2001
15 October, 2001
31 October, 2001
2 November, 2001
6 November, 2001
27 November, 2001

Document 24:2

This appeal will be brought forward under the terms and provisions of Article Three, Section One, of the Constitution of the United States; 28 USC 455; 28 USC 1257 and 28 USC 1651.

George Lawson Kelly,
Plaintiff

George Lawson Kelly
522 Cleveland Street
Clearwater, FL 33755
727.442.5093

Exhibit E:1

Goin' Round in Circles: Latest Traffic Trend leaves Driver Dazed
-Wall Street Journal, Friday January 18, 2002, Front page

For Safety's Sake, Roundabouts Replaced many Stop Lights; Then the Pileups Piled Up by Rick Brooks, Staff reporter of THE WALL STREET JOURNAL

CLEARWATER, Fla. - Carol Cullen had 15 years of dent-free driving under her belt when she steered a rented van last July onto a new circular intersection here. Seconds later, a delivery truck that was supposed to stay in the next lane plowed into the van, leaving Ms. Cullen unhurt but disoriented.

"The whole world is trained to look straight ahead," says Ms. Cullen, who sets up promotional displays for Hilton Hotels Corp. "Now they've got us trying to stare around curves?"

It seemed like a good idea at the time. The $8 million Clearwater roundabout would replace a dangerous tangle of streets and intersections often choked with beach-bound traffic. It would create an artistic entry point for visitors.

Confusion Reigns

But since opening in December 1999, the roundabout has scared the wits out of drivers trying to navigate it. No one knows which cars are supposed to have the right-of-way. Some discombobulated motorists hug the right shoulder, making it hard for other cars to exit and causing backups at side streets. The wedding-cake shaped fountain in the center has doused windshields and obstructed views of cars rounding the circle from the opposite side.

So far, there have been more than 500 accidents at the roundabout, which was touted at its opening as the greatest ever built in the U.S. The site "has been very good for

business," says James McKeever, manager of nearby Pinellas Auto Body & Service Inc, which had one of its own tow trucks hit there. The frequency of accidents is eight times higher at the roundabout than at the intersections it replaced.

City officials say the crashes are less severe, primarily because cars are now moving more slowly.

It's a similar story elsewhere. As traffic planners across the U.S. rip out stop signs to install roundabouts that can slow aggressive drivers, some cities are discovering that these so-called "traffic calming devices" do exactly the opposite. Some drivers go the wrong way, figuring it's OK to turn left into the roundabout if you plan to hop off at the first side street. Trucks flatten curbs and landscaping. In some places, accident rates have surge after the installation of roundabouts, causing them to be razed in favor of old-fashioned traffic lights or stop signs.

The Circle Game

Roundabout designers, a number of whom are British or Australian, grudgingly acknowledge that they have a lot to teach Americans about going in circles. In April 2000, officials in Claremont, Calif., demolished the town's only roundabout just eight months after it was installed, saying drivers found it bewildering. Driver confusion at two roundabouts near Las Vegas has put them on Nevada's annual list of the worst crash spots. A video called "Roundabout Rules of the Road" was broadcasted in Nashville, Tenn., for several weeks last year after a roundabout opened on music Row.

In Clearwater, disoriented drivers smacked into each other or into the fountain at the an average of almost five a week. Tires squeal, horns honk and brakes screech as drivers try to make their way through the loop.

The nearby beach is also harder to reach without taking a spin around the circle. "It's a monster, and I was an

engineer myself," says retiree Bernice Lazar, who take a nine-mile detour to avoid the roundabout.

Roundabouts are the latest incarnation of the circular intersections that began in this country with New York City's Columbus Circle in 1905. Defenders claim the modern roundabout is a much-safer alternative to the traditional traffic circles typical of New England, which were usually larger rotaries that didn't slow cars much and gradually fell out of favor. The new roundabouts-based on a slimmed-down British version-are designed with a much smaller diameter, making the circle tighter and forcing driver to lower speeds to about 15 miles an hour.

Forced Slowdown

The circles' defenders claim they are safer than typical intersections, since drivers are forced to navigate slowly. About 9,500 fatal accidents occur at traditional intersections every year, according to the Federal highway Administration. Several academic studies have shown declines in crashes where roundabouts were built, including in Europe, but federal officials say it depends on where and how the circles are built.

"You can't just put these down everywhere," says Harry Campbell, the chief transportation engineer of Orlando, Fla., which spent $25,000 to build a small circle and then concluded that four $75 stop signs would have worked better. "It's like art," he says of the roundabout-building boom. "It evokes controversy."

The controversy erupted quickly in Clearwater. As the pileups piled up, some drivers began adopting survival techniques that reduce the efficiency of roundabouts, like straddling both lanes at once to avoid side collisions. Angry drivers flooded city hall and local newspapers with complaints.

Exhibit E:4

Missing Arrows

And some roundabout rules don't make much sense, including permitting cars to exit from the inside lane. At the most notorious exit point in the Clearwater circle, there still are no arrows on the pavement to point drivers in the right direction. On busy beach-gong days, the roundabout has handled more than 50,000 vehicles, much more than the 32,000 it was designed for.

Clearwater is trying to turn things around. The fountain has been turned off and is likely to be demolished, and changes to lane marking give drivers a better idea of where to aim. The most recent accident reports also offer some encouragement: 23 crashed in the final three months of last year compared with 49 in the same period of 2000.

Michael Wallwork, a transplanted Australian who helped design Clearwater's roundabout, pins much of the blame on drivers. "A lot of the opposition to roundabouts comes from a very simple bias," he says.

"Americans are fed a diet of speed all the way from freeways to residential streets."